



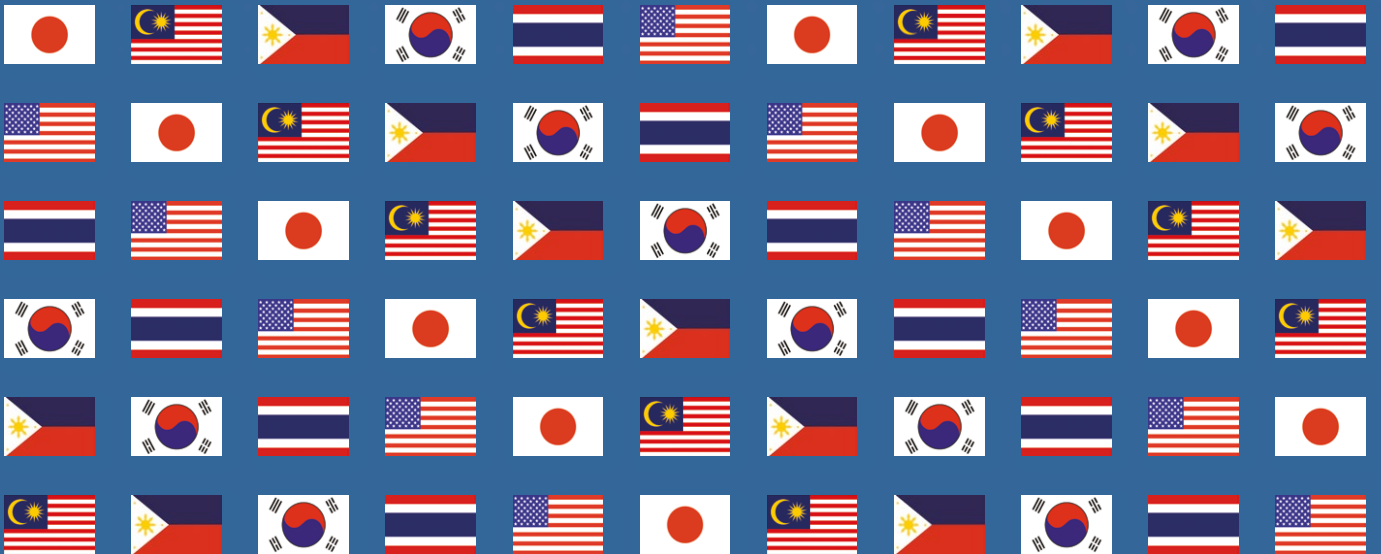
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Getting The Deal Through

# OCCUPATIONAL HEALTH & SAFETY 2024

Contributing editors

**Jonathan L Snare, Jason S Mills and Alana F Genderson**



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# Global overview

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## Workplace safety

For more than 100 years, the public perception of workplace safety and the respective roles and responsibilities of employers, employees and the government have shifted dramatically. Changes to workplace safety protocols are frequently catalysed by significant tragedies in the workplace. The aim of this publication is to examine the unique nature of workplace safety in countries across the world, spanning Asia, Europe and North America, to provide guidance to practitioners in understanding both the common elements and differences between workplace safety systems. Ultimately, no matter the location, one of the most important assets (if not the most important asset) of employers is their employees.

One hundred and ten years ago, at the Triangle Shirtwaist Factory in Greenwich Village, New York, management kept the doors to the stairwells and exits from the factory locked during the working day to prevent workers from taking unauthorised breaks and to reduce the risk of worker theft. On 25 March 1911, this decision tragically cost the lives of 146 employees who died after being unable to escape a fire that engulfed the facility. The horrors of that day are widely considered to be a turning point in the public perception of worker safety in the United States, leading directly to reforms to the Labor Code in the state of New York. Across the world, deadly workplace disasters such as that of the Triangle Shirtwaist Factory resonate in the public mind long after they occur, leading to a communal sense of loss and shared questions about whether any measures could have been taken to prevent the loss of life.

Worldwide, mining disasters have devastated local communities in particular, with the worst mining disaster in history claiming over 1,500 lives in 1942 after a gas and coal explosion destroyed the Honkeiko colliery in Benxi, Liaoning province, China. Accidents causing explosions have a particularly devastating impact. The deadliest industrial disaster in Canada happened in December 1917 when French cargo ship SS Mont-Blanc, loaded with wartime explosives, collided with a Norwegian vessel in Halifax harbour, causing a massive explosion that killed and injured thousands of people. On 4 October 1918, the TA Gillespie Shell Loading Plant in Sayreville, New Jersey exploded, setting off a series of detonations throughout central New Jersey, leaving an estimated 100 dead, several hundred injured and hundreds of buildings destroyed. Shockwaves were felt as far away as Newark and New York City. These events are not limited to the distant past; the worst industrial disaster in history occurred almost 40 years ago when, in 1984, a leak from a pesticide plant in Bhopal, India released toxic gas, exposing nearby communities to deadly chemical exposure and killing thousands. More recently, on 23 March 2005, a series of explosions occurred at the BP Texas

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City refinery during the restarting of a hydrocarbon isomerisation unit. Fifteen workers were killed and 180 others were injured.

In the twentieth century, many industrialised countries initiated and implemented national workplace safety regimes, including processes to issue standards and policy guidelines to address workplace hazards and to improve workplace health and safety. In 1950, the World Health Organization and the International Labour Organization [adopted a common definition of occupational health](#):

- the maintenance and promotion of workers' health and capacity;
- the improvement of the working environment to become conducive to health and safety;
- the development of work organisations and cultures to support health and safety;
- a positive social climate; and
- smooth operation.

The covid-19 pandemic is an example of a recent workplace safety hazard present in the twenty-first century that transcends international borders. During the pandemic, worker health and safety took centre stage globally as employees across industries reported to work despite increased risk of illness and related apprehension. Governments struggled to communicate rapidly changing guidelines and conditions in the early stages of the pandemic, especially when little was known about the transmission of the virus. However, many organisations rose to the challenge and implemented comprehensive and innovative policies to reduce the risk of virus exposure, including social distancing, masking, rotating shifts, improvements to ventilation, reducing in-person meetings and other contacts and transitioning positions to work remotely. This became a herculean task due to navigating the regulations and requirements across local, regional, national and international standards. Multinational corporations faced particular turmoil and uncertainty. Within the same month, an organisation could witness some of its locations shut completely, others able to remain open with restrictions, while some could open as usual with no precautions in place, all due to the varied responses by different governmental and regulatory authorities.

The toll left by the covid-19 pandemic is not yet fully known, but a [2021 global analysis](#) suggests that at least 17,000 healthcare workers across the world died from coronavirus. In years to come, more data is expected to emerge showing the pandemic's ultimate toll across all sectors of global society. In addition to work-related covid-19 virus exposure, which sometimes led to severe injury or death, the pandemic damaged workplace morale, productivity, turnover and organisational reputation, causing many enterprises across the world, particularly small businesses, to permanently close.

The covid-19 pandemic demonstrated far more than ever that in today's world, workplace health and safety challenges transcend international borders, and organisations must remain vigilant and carefully review and implement safety requirements across jurisdictions. Workplace health and safety is a key factor in the prosperity of a business, and this publication aims to provide the tools for organisations to navigate the many complex issues involved in implementing robust and compliant safety structures. This publication provides an introduction to the workplace health and safety regimes in six countries, providing an overview for organisations to review and compare standards across jurisdictions. Each chapter will cover the enforcement framework in place, including the various laws, regulations and other requirements that organisations must follow. The different processes

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by which each country develops workplace health and safety requirements for all stakeholders to follow will also be explored, ranging from regulations, statutes and guidance. Each chapter also features country-specific information on issues that employers face on a daily basis, including developing a compliance strategy, workforce training, appropriate safety equipment provision, ensuring safe work-task performance, accident reporting and reducing injury and illness.

These types of health and safety policies offer wide-ranging protections that not only keep employees safe but also allow businesses to function optimally, even during challenging times and conditions. Proactive policies that identify and address workplace hazards before they cause injury or illness are not only required across many jurisdictions, but also provide value by increasing trust between employers and employees, improving safety, enhancing communication and leading to overall improvements in operations. As the world recovers from the covid-19 pandemic and attention turns to future global challenges, the successful implementation of workplace health and safety policies should continue to remain a top priority for employers, employees, other stakeholders and governments worldwide.

\* *The authors gratefully acknowledge the assistance of Ariel Kapoano, Jamie Huffman, and Gwyneth Harrick in writing this overview.*

## Morgan Lewis

[Jonathan L Snare](#)

jonathan.snare@morganlewis.com

[Jason S Mills](#)

jason.mills@morganlewis.com

[Alana F Genderson](#)

alana.genderson@morganlewis.com

1111 Pennsylvania Avenue NW, Washington DC 20004-2541, United States

Tel: +1 202 739 3000

[www.morganlewis.com](http://www.morganlewis.com)

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# Japan

[Taichi Arai](#), [Mariko Morita](#), [Masahiro Ueda](#), [Makoto Nishimura](#) and

[Shoko Kosaka](#)

[Mori Hamada & Matsumoto](#)

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## LEGAL FRAMEWORK

### Legislation

- 1 | What legislation governs occupational health and safety in your jurisdiction? Are there any notable sector-specific laws or exclusions from the primary legislation?

In Japan, the Industrial Safety and Health Act (the Act) governs occupational health and safety. Some rules for specific sectors are specified in other laws (eg, the Mine Safety Act), but most sector-specific rules are specified in government ordinances. The Act does not apply to businesses employing only relatives living together or to mariners covered by the Mariners Act. It also does not apply to certain white-collar government officials.

### Regulations

- 2 | How are regulations relating to occupational health and safety generally issued in your jurisdiction? What compliance obligations do these regulations generally impose on employers?

Regulations relating to occupational health and safety are issued through legislative amendments to the Act and amendments to the relevant ordinances by the Minister of Health, Labour and Welfare. Employers must ensure the health and safety of workers in the workplace by establishing an organisation for health and safety management and implementing specific measures to prevent industrial accidents (see page 1 of the [Overview of the Legal Structure of the Industrial Safety and Health Act](#)).

### Applicable employers and workers

- 3 | Which employers and workers are subject to the occupational health and safety regime? Are there any notable exclusions?

Protection under the Act applies to 'workers', the concept of which is the same as workers under the Labour Standards Act. As such, it covers all employees, whether they are on-site, off-site or working from home; however, independent contractors are not covered by the Act. Also, the Act does not apply to certain white-collar government officials and employees of workplaces that employ only relatives living together.

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## Applicable risks

### 4 | Which health and safety risks are covered under the relevant legislation?

In the Act, an industrial accident is defined as 'a case in which a worker is injured, contracts a disease or is killed due to causes attributable to buildings, facilities, raw materials, gas, vapour and dust, etc, in or with which he or she is employed, or as a result of his or her work actions or attending to his or her duties'. To be recognised as an industrial accident, there must be a causal relationship between the work and the injury, illness, disability or death of the worker. The Director of the Labour Standards Inspection Offices will determine the existence of a causal relationship based on two criteria:

- whether the accident occurred during the performance of work or while under the control of the employer; and
- the causality between the work and the accident.

## Authorities

### 5 | What government authorities are charged with the enforcement and administration of the occupational health and safety regime in your jurisdiction? What is the extent of their activities and powers?

In Japan, the Minister of Health, Labour and Welfare (MHLW) is responsible for the enforcement and management of the occupational health and safety system. It is supported by the Prefectural Labour Bureaus and the Labour Standards Inspection Offices, both established in each prefecture under the Labour Standards Act. The Labour Standards Inspection Offices are subordinate organs under the supervision of the Prefectural Labour Bureaus, which are under the direction and supervision of the MHLW. In accordance with the law, these supervisory bodies can enter workplaces for on-site inspections and provide the necessary guidance and supervision to ensure that employers comply with the health and safety standards set out in the Act.

## Soft law and guidance

### 6 | Has the government issued any guidance or codes of practice relating to occupational health and safety in your jurisdiction? What force do these have and how are they implemented in practice?

The MHLW issues guidance and codes of practice relating to occupational health and safety in the form of government notifications to prefectural labour bureaus. Unlike laws and regulations, these do not have a direct effect on employers. However, government notifications are effectively complementary to the laws and regulations, as they provide a basis for the interpretation and application of the laws and regulations by the supervisory authorities when they provide guidance to and supervise employers on occupational health and safety systems.

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## EMPLOYER DUTIES AND RESPONSIBILITIES

### Primary duty

- 7** | What is the nature and extent of the employer's primary duty to protect workers' health and safety under the relevant legislation? How is this duty observed and interpreted in practice?

Under the Industrial Safety and Health Act (the Act) and other labour-related laws, employers should make efforts to ensure the health and safety of workers in the workplace by creating a comfortable work environment and the improvement of working conditions. Specifically, employers are required to establish a health and safety management system, including the appointment of safety managers and industrial physicians and the establishment of health and safety committees. Also, pursuant to standards for the prevention of danger and health hazards (depending on the project or industry) established under the Act, employers should take measures to prevent danger or health impairment, including understanding actual working hours of workers and providing face-to-face guidance by a physician; health and safety training; work restrictions such as where only qualified personnel must be assigned to specific hazardous work (eg, crane operation); implementing working environment measurements in indoor workplaces where hazardous work is being performed; and providing health check-ups for employees.

### Third parties

- 8** | Does the employer owe a duty to protect the health and safety of third parties? If so, what is the nature and extent of this duty?

Yes. When an employer (ie, the principal employer) hires another business entity (contractor, or contractor and sub-contractor if there is a multi-layered relationship) to do work, the principal employer has the responsibility to take measures to ensure the health and safety of the contractor's employees, or the subcontractor's employees in the case of a multi-layered system with an orderer, contractor and sub-contractor. Contractors must give the necessary guidance so that sub-contractors and the workers of related sub-contractors do not contravene the Act. Also, the owner must not give any instructions to the contractor that would constitute a violation of the Act.

### Work premises

- 9** | What is the nature and extent of the employer's duty to ensure safe work premises?

Employers must take necessary measures to prevent danger from machinery, explosives, energy and other equipment or materials. Employers should also take necessary measures to prevent health hazards due to raw materials, gas, radiation, high or low temperatures, stress and other materials or conditions, which are specified by ordinance, depending on the industry.

The employer's obligations regarding first aid kits, sanitary facilities and rest facilities are detailed in the Ordinance on Industrial Safety and Health. For example, any employer should

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provide first aid tools and materials such as medical dressings and disinfectants, carry out general cleaning periodically, provide a sufficient amount of drinking water and provide a certain number of separate toilets for men and women. An employer should generally provide rest facilities outside the workplace if the workplace is extremely hot or humid or emits harmful gases or vapours. If it is necessary to provide workers with sleep at night, or if there is an opportunity for workers to take a nap during work hours, the employer must provide suitable sleeping or napping places, distinguishing between places for men and women.

## Plant and equipment

### 10 | What are the employer's duties and responsibilities regarding the provision of safe plant and equipment?

This depends on the employer's industry, activity or machinery it uses, but the basic principle is that employers should take measures to keep workers away from dangerous machinery and to stop machinery operations when they approach machinery to work on it, such as when cleaning it.

For the former, for example, the employer must provide an enclosure, cover or protective gear when the work could endanger workers due to flying cut or broken workpieces or chips from machines.

For the latter, for example, the employer generally must provide a power cut-off device that can be easily operated and is unlikely to be unexpectedly activated due to contact, vibration, or other causes for each machine. The employer must also stop the operation of the machinery when employees clean, inspect or repair it; however, this shall not apply where work has to be carried out during operation and when taking appropriate measures such as covering dangerous machine parts.

## Work systems, training and supervision

### 11 | What are the employer's duties and responsibilities regarding the provision of safe work systems and adequate training and supervision?

Regarding work systems, at workplaces of a certain size and in certain industries, employers must appoint a general health and safety manager as the person in charge of instructing safety managers and health managers and the overall control of health and safety at the workplace. Employers should also appoint safety managers or health managers who will be in charge of technical matters regarding health and safety. Also, employers should appoint at least one industrial physician for a workplace that employs 50 or more workers, and two or more industrial physicians for a workplace that employs 3,000 or more workers.

In workplaces employing 50 or more workers in certain industries and those employing 100 or more workers in certain other industries, a safety committee must be established to deliberate on basic and important measures to prevent danger or the causes and recurrence of industrial accidents. In workplaces employing 50 or more workers, regardless of industry, a health committee must be established to discuss basic measures to prevent health hazards to workers and maintain and promote the health (including mental health)

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of workers. In workplaces where both of these committees are required, the two may be merged into a health and safety committee.

Regarding training, when employing a new worker or changing work details, the employer must provide education and training on safety or health, such as the dangers of machinery and how to handle machinery, work procedures, inspections and emergency measures in the case of accidents.

### Accident response and reporting

#### 12 | What rules and requirements govern employers' response to and reporting of workplace accidents?

The employer must submit a report to the relevant Labour Standards Inspection Office without delay when a major accident, such as fire, explosion, building collapse or a lift accident involving a construction lift or light capacity lift, occurs at the workplace, or when a worker is killed or suspended from work due to an industrial accident or injury.

The Minister of Health, Labour and Welfare can order employers that have repeatedly caused serious workers' accidents (ie, accidents that have resulted in workers' deaths or serious disabilities) within three years to submit a health and safety improvement plan aimed at preventing the reoccurrence of accidents. When preparing such a plan, employers must hear the opinion of a labour union representing a majority of the workers at the workplace or an employee representing a majority of the workers at the workplace if no such labour union exists.

Near misses are not subject to any reporting requirements under the law.

### Risk assessments

#### 13 | What rules, requirements, procedures and best practices should employers be aware of when conducting occupational risk and hazard assessments?

Risk assessment is the process of investigating and identifying potential risks of danger and harm at the work premises and taking preventive measures. Certain industries, such as manufacturing, construction, forestry and transportation, are obliged to try to do risk assessments. Employers must exert efforts to investigate substances (eg, chemicals and preparations containing chemicals) that are likely to cause danger or health impairment to workers. However, employers that handle hazardous or harmful chemical substances are required to conduct risk assessments.

In practice, the risk assessment procedure is as follows:

- identify dangers and harms in the workplace;
- estimate the risk by combining the severity and the possibility of the hazard that can be caused by each danger and harm;
- after determining the priority of countermeasures based on the magnitude of the risk, consider measures to eliminate or reduce the risk; and
- implement measures to eliminate and reduce the risk and record the results.

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## Disclosure and reporting requirements

### 14 | Are employers required to submit regular health and safety reports to the relevant authorities? If so, what is the nature and extent of this requirement?

Regarding the results of periodic medical examinations, dental examinations and medical examinations for workers engaged in specified hazardous work, employers with 50 or more employees must submit a report to the Labour Standards Inspection Office without delay. Also, after appointing a general health and safety manager, safety manager, health manager and industrial physician, the employer must submit a report to the Labour Standards Inspection Office without delay.

## Provision of information to workers

### 15 | What requirements apply regarding the provision of health and safety information to workers?

Employers must provide health and safety training to workers when they are hired, when they change the content of their work or when they engage in certain dangerous or harmful work. Also, in certain industries such as construction and manufacturing, health and safety training must be provided to newly assigned foremen or those who directly supervise workers. An employer should make efforts to provide its employees with health education or counselling and to otherwise help maintain and improve its employees' health. Also, employers must inform their workers of a summary of the Act and related ordinances and about the availability of industrial physicians for health counselling, by displaying or posting the information in a conspicuous place at the workplace.

## Insurance requirements

### 16 | What insurance must employers carry to cover liability for occupational health and safety risks?

All business entities employing at least one worker, except for businesses managed by public agencies or directly by the government and businesses under the Mariners' Insurance Act, are covered by the industrial accident compensation insurance administered by the government. The insurance premiums are collected from the employers, and the premium for businesses above a certain size is based on the number of insurance benefits paid within the past three years.

## Other duties and responsibilities

### 17 | Are employers subject to any other notable health and safety duties and responsibilities in your jurisdiction?

No.

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## WORKER DUTIES, RIGHTS AND RESPONSIBILITIES

### Primary duty

- 18** | What is the nature and extent of a worker's duty to protect their own and others' health and safety under the relevant legislation and regulatory framework?

The Industrial Safety and Health Act (the Act) stipulates that workers must observe and cooperate with measures necessary to prevent industrial accidents, including measures taken by their employers to prevent specific dangers at work sites such as dangers due to machines or health impairment due to gas, dust, radiation and other causes, and cooperate in implementing measures conducted by employers (articles 4 and 26 of the Act). Similarly, workers must take the medical examination arranged by the employer and endeavour to maintain and promote their health by utilising the services provided by the employer (articles 66 and 69 of the Act). However, these workers' duties are secondary to the employers' duties and responsibilities. Even if workers did not fulfil their duties regarding their health and safety when industrial accidents happened, such facts will usually be only reflected in consideration of comparative negligence.

### Consultation and collaboration with employers

- 19** | Are workers in your jurisdiction entitled or required to consult and collaborate with their employer in relation to the development and implementation of health and safety measures and policies?

Workers are required to observe matters necessary to prevent industrial accidents, to cooperate in accident-prevention measures taken by employers and to endeavour to maintain and promote their health by utilising the services provided by employers. When an employer is required to establish a safety committee or a health committee, or both, half of the members of those committees (except for the general health and safety manager) must be designated based on the recommendation of the trade union composed of a majority of the workers at the said workplace or those representing a majority of those workers. These committees must investigate and deliberate on matters on the prevention of danger to workers or workers' health impairment (articles 17 and 18 of the Act).

### Trade unions

- 20** | What role do trade unions play in protecting occupational health and safety in your jurisdiction?

For labour and management to deal with the prevention of industrial accidents together, the employer must establish a safety committee at each workplace with 50 to 100 or more employees (depending on the industry), half of the members of which (other than the general health and safety manager) must be designated based on the recommendation of the trade union organised by a majority of the workers at the said workplace (if no such trade union exists, of those representing a majority of the workers) (article 17 of the Act). The same designation rule applies to health committees, which must be established at each workplace with 50 or more employees for all industries (article 18 of the Act). Also, if the

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labour bureau instructs an employer to prepare a health and safety improvement plan, the employer must hear the opinion of the trade union composed of a majority of the workers at the said workplace in preparing such a plan (articles 78 and 79 of the Act).

## Whistle-blowing

### 21 | Are workers afforded any legal protections against reprisals for whistle-blowing in relation to occupational health and safety risks?

While there are no particular rules regarding whistle-blowing in occupational health and safety issues, the Whistleblower Protection Act stipulates that dismissal or cancellation of a worker dispatch contract as a reprisal for whistle-blowing is void and null (articles 3 and 4), and also generally prohibits disadvantageous treatments of whistle-blowers (article 5). That law covers whistle-blowing concerning occupational health and safety risks. However, there are no criminal and administrative penalties regarding reprisals or retaliation against whistle-blowers under Japanese law. The amendment of this Act will take effect on 1 June 2022, and the scope of the Act will expand to former employees who left the company within a year and to officers and board members.

## Right to refuse work

### 22 | Do workers have the right to refuse work or seek reassignment in hazardous situations?

While there is no statutory right for workers to refuse work in hazardous situations or to seek reassignment from hazardous jobs, work orders or instruction to work in a hazardous situation may be considered an abuse of rights and therefore illegal and void if there is no business necessity, or if there is a business necessity but it is made with improper motives or objectives or if it subjects the worker to a disadvantage that markedly exceeds a degree that should normally be tolerated. A court precedent ruled that the dismissal of crews who refused an order to sail to a sea area under military tension was void because there was an unavoidable military danger even if every possible security means was taken and such danger was not the same type of danger that the crews generally expected in related to their maritime work (see the Supreme Court Decision in *Chiyoda-maru* [24 December 1968]).

## HAZARDS AND RISKS

### Hazardous substances and chemicals

### 23 | What occupational health and safety rules govern the handling and use of hazardous substances and chemicals? What are the practical implications of these rules?

The Industrial Safety and Health Act (the Act) provides detailed regulations regarding hazardous substances. Generally, restricted materials fall into four categories:

- explosive (eg, nitroglycerine and trinitrobenzene);
- ignitable (eg, yellow phosphorus and charcoal calcium);

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- oxidising (eg, sodium nitrate and potassium chlorate); and
- flammable (eg, petrol, ethanol, benzene and hydrogen).

Further, some laws and regulations complement the Act in some areas, for example:

- the Ordinance on the Prevention of Lead Poisoning;
- the Ordinance on the Prevention of Organic Solvent Poisoning; and
- the Pneumoconiosis Law.

The range of restricted substances is so broad that employers should check on a case-by-case basis whether the substances they will use fall within these categories and which regulations would be applied.

## Heavy machinery

### 24 | What occupational health and safety rules govern the operation of heavy machinery? What are the practical implications of these rules?

Employers must carry out periodic self-inspections of heavy machinery and keep records of the results (articles 45.1 and 45.2 of the Act). Such self-inspections must be carried out by workers with specific licences or by registered inspection agencies, and employers must not allow employees who are not licensed to use heavy machinery to handle work that requires heavy machinery (article 61 of the Act). Further, employers must give workers who use heavy machinery special education for health and safety (article 59.3 of the Act).

Adding to the aforementioned general principles under the Act, there are special regulations that supplement the Act, such as the Safety Ordinance for Cranes and the Safety Ordinance for Gondolas.

## General machinery

### 25 | What occupational health and safety rules govern the operation of general machinery in the workplace?

The Act and the Ordinance on the Enforcement of the Act (the Ordinance) have detailed provisions for the operation of each type of machinery. The Ordinance provides general regulations for machinery as follows:

- employers must provide an enclosure, cover or another type of protection for a prime mover, a rotating shaft, a gear, a pulley and a belt (article 101 of the Ordinance);
- employers must provide a power cut-off device for each machine (article 103.1 of the Ordinance);
- employers must provide a cover or enclosure for machinery that produces flying chips when there is a risk that workers may be exposed to the flying chips (article 105.1 of the Ordinance); and
- employers must provide footstools that are safe and have the appropriate height when a lathe, a rolling mill or other machines are too high for the workers using them (article 545 of the Ordinance).

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These are regulations that apply to all machines in general, but certain machines may be subject to stricter or other more specific regulations. Therefore, employers should check the legislation and relevant regulations before using a machine.

### Lock-out and tag-out

#### 26 | What occupational health and safety rules govern how employees are protected while performing service and maintenance on machinery and equipment? Any there any exceptions to these rules?

Employers have a general duty to ensure the safety of their employees at work. The Act provides for some clauses that embody this general duty. For example, where employees must operate a dangerous machine, the employer must set fixed signals to warn the employees when danger arises, designate a person who must give the signals and ensure the said person gives the necessary signals to the employees concerned (article 104.1 of the Ordinance). Further, where the cleaning, lubrication, inspection or repair of a machine (except for blade particles) may endanger the employees who are operating the machine, the employer must stop the operation of the machine during those activities (article 107.1 of the Ordinance). These are a few of the cases where the Act and the Ordinance provide for an employer's particular duty of care. Generally, employers must try to eliminate, to the extent possible, risks arising from the working environment.

### Ergonomic risks and eye strain

#### 27 | What rules and measures apply to manage ergonomic risks and eye strain in the workplace?

There are no legal regulations that employers must follow regarding ergonomic risks and eye strain. However, the Minister of Health, Labour and Welfare (MHLW), in its Guidelines for Occupational Health Management in Information Technology Work, provides information on the measures that employers should take to reduce the physical and mental burden of employees and to assist them in performing information technology work without hindrance, based on knowledge in the fields of industrial medicine, ergonomics and other relevant areas concerning occupational health management, including work environment management, work management and health management in visual display terminal work. These Guidelines are a useful reference. While employers are not obliged to comply with the Guidelines, they help to create a worker-friendly working environment.

### Noise and temperature

#### 28 | What rules and measures apply to manage risks arising from workers' exposure to noise and temperature extremes?

The Ordinance defines the kinds of indoor workshops that produce extreme noise (article 588 of the Ordinance). Regarding such workshops, employers must measure the noise level once every six months and keep a record of the results for three years (article 590 of the Ordinance).

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As for temperature, employers must take appropriate measures to adjust the temperature and humidity of indoor workshops that have hot, cold or humid conditions that may be detrimental to health (article 606 of the Ordinance). Also, regarding some specified indoor workshops that have hot, cold or humid conditions, employers must measure the atmospheric temperature, humidity and radiation heat in those indoor workshops and keep a record of the results (article 607 of the Ordinance).

## Fire risks

### 29 | What rules, restrictions and procedures govern the assessment and management of fire risks in the workplace?

In addition to the Fire Service Act and the Ordinance for the Enforcement of the Fire Service Act, both of which regulate the prevention and suppression of fires, the Industrial Safety and Health Act requires employers to take the necessary measures to reduce the risk of fire. For example, the Industrial Safety and Health Act states that employers must provide buildings with fire extinguishing equipment at appropriate places where inflammable materials are handled (article 289 of the Act). Employers in certain industrial sectors should be aware that the foregoing law also sets out special obligations for companies in certain industrial sectors.

## Psychiatric harm from stress, abuse and violence

### 30 | What rules and measures apply to prevent and address psychiatric harm arising from workplace stress, abuse and violence?

Under the Labour Measures Comprehensive Promotion Act, not only employers classified as large companies but also employers classified as small and medium-sized companies must take measures against bullying and violence in the workplace (known as power harassment in Japan) effective from 1 April 2022. The required measures include:

- clarification, notification and awareness-raising of the employer's policy;
- development of a system to receive and respond appropriately to allegations; and
- prompt and appropriate response after the occurrence of power harassment.

If there are more than 50 employees in a workplace, the employer must conduct a stress check for all employees. This is to prevent the employees from getting mentally ill. The stress check is as follows:

- the employer distributes questionnaires to the employees and evaluates the level of their stress; and
- for employees whose stress levels seem high, the employer confirms with a doctor or a health nurse if those employees should be interviewed or advised directly by doctors.

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## Special categories of worker

### 31 | Are there any notable rules or procedures providing additional health and safety protection to special categories of worker?

Employers cannot order pregnant workers who are due to give birth within six weeks to continue working. Also, in general, employers cannot order workers who are not yet past eight weeks of the postpartum period to work.

The Act does not have any notable rules for the elderly or disabled. However, the MHLW issued guidelines to ensure the health and safety of elderly workers.

## Other hazards and risks

### 32 | Are there any notable rules, restrictions or procedures applicable to other occupational hazards and risks in your jurisdiction?

There are no special rules or other requirements applicable to other occupational hazards and risks under Japanese law.

## ENFORCEMENT

### Inspections and investigations

#### 33 | What rules and procedures govern the enforcement authorities' inspection of workplaces and investigation of employers for health and safety violations?

When a worker dies or is absent from work due to an industrial accident, the employer must submit a report on the worker's death or injury to the director of the Labour Standards Inspection Office without delay.

In the event of a fatal or serious accident, the Labour Standards Inspection Office will usually conduct an accident investigation. If, as a result of the investigation, a violation of the Industrial Safety and Health Act (the Act) is suspected, a labour standards inspector will be assigned as a special judicial police officer to conduct the investigation. This investigation will be conducted under the Criminal Procedure Law.

### Cooperating with authorities

#### 34 | What best practices and practical considerations should employers bear in mind when cooperating with and responding to inspections and investigations by the health and safety authorities?

The best course of action is to accurately report the facts and fully cooperate with the investigation.

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## Penalties and notices

### 35 | What administrative penalties and notices may the authorities impose on employers for health and safety violations? Can these be appealed?

The director of the relevant Prefectural Labour Bureau or the director of the relevant Labour Standards Inspection Office may take administrative action to order the suspension or change in the use or work of a facility or equipment, or other necessary measures when the facility or equipment violates health and safety standards and poses an imminent danger to workers (article 98 of the Act).

Also, the Minister of Health, Labour and Welfare may instruct an employer who has caused a serious industrial accident to prepare an improvement plan for safety or health at the workplace to prevent a recurrence. If the employer does not comply with the Minister's instruction or does not adhere to this plan, the Minister may recommend taking necessary measures to prevent a recurrence, and the failure to comply with this recommendation may result in the public announcement of the name of the employer.

## Civil liability

### 36 | What is the extent of the employer's civil liability for health and safety violations? Can this liability be limited in any way? What defences apply?

If an employee suffers damage as a result of negligence in the health and safety management required of an employer, the employer will be liable to the employee for damages for violation of its obligation to consider workers' safety stipulated under the Labour Contract Act and based on tort.

There is no specific cap on liability for damages, but if workers' compensation benefits are paid to the employee, the number of such benefits can be deducted from the total liability of the employer.

## Criminal liability

### 37 | May employers be criminally liable for health and safety violations? What defences apply?

The Act stipulates criminal penalties for violations of the Act such as failure to report or making a false report on an industrial accident, or failure to take measures to prevent dangers and hazards. Any serious violation of the law can be prosecuted. If a worker is injured or killed, the employer may be accused under criminal law of causing the death or injury through professional negligence. As there are no typical defences that can apply to all cases, employers should endeavour to settle with the injured employees or bereaved family members of employees who died, to avoid prosecution or to produce evidence of measures taken to prevent work dangers and hazards, or to argue that the accident was not work-related. Also, employers may raise the defence that the breach of the law was not intentional.

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## Director and officer liability

### 38 | To what extent may company directors and officers be held liable for health and safety violations?

Directors or officers who violate their duty to manage health and safety may be held personally and civilly liable, jointly and severally, with the company. Also, criminal liabilities under the Act may be imposed not only on the employer but also on employees or directors who commit offences concerning the employer's business.

## UPDATE AND TRENDS

### Recent developments

### 39 | What have been the most significant recent occupational health and safety developments in your jurisdiction, including any notable court decisions and regulatory actions?

The scope of eligible workers for a special insurance programme for people under non-employment relationships, such as contractors or self-employed workers, was expanded to dental technicians, licensed masseuses and acupuncturists from 1 July 2022.

The Minister of Health, Labor and Welfare's Notification that defines the scope of illnesses covered by workers' compensation has been revised, and urinary tract tumours caused by MOCA (Materials and Objects in Contact with Food) manufacturing and handling operations have been newly added. In addition, 'serious heart failure' was newly added to brain and heart diseases due to overload at work.

Effective from 1 April 2023, the employer that has its employees directly engage in hazardous and harmful work will have to take prevention measures not only for its direct employees but also for all people who engage in any duties at the same workplace, including independent contractors, and also the scope of equipment that is subject to measures necessary to prevent industrial accidents of the contractor's workers to be taken by the ordering party will be expanded.

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## MORI HAMADA & MATSUMOTO

---

[Taichi Arai](#)

taichi.arai@mhm-global.com

[Mariko Morita](#)

mariko.morita@mhm-global.com

[Masahiro Ueda](#)

masahiro.ueda@mhm-global.com

[Makoto Nishimura](#)

makoto.nishimura@mhm-global.com

[Shoko Kosaka](#)

shoko.kosaka@mhm-global.com

16th Floor Marunouchi Park Building, 2-6-1 Marunouchi

Chiyoda-ku, Tokyo 100-8222, Japan

Tel: +81 3 5220 1800

[www.mhmjapan.com](http://www.mhmjapan.com)

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# Malaysia

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## LEGAL FRAMEWORK

### Legislation

- 1 | What legislation governs occupational health and safety in your jurisdiction? Are there any notable sector-specific laws or exclusions from the primary legislation?

In Malaysia, the main pieces of legislation governing occupational safety and health are the [Occupational Safety and Health Act 1994](#) (OSHA 1994), the [Factories and Machinery Act 1967](#) (FMA 1967) and the [Petroleum \(Safety Measures\) Act 1984](#).

The OSHA 1994 applies throughout Malaysia to industries such as manufacturing, mining and quarrying, construction, agriculture, forestry and fishing, utilities, transport, storage, communication, wholesale and retail trades, hotels and restaurants, finance, insurance, real estate and business services, public services and statutory authorities. However, the OSHA 1994 is not applicable to work on board ships, pursuant to the Merchant Shipping Ordinance 1952 and Merchant Shipping Ordinance 1960 of Sabah or Sarawak and the armed forces.

The [Occupational Safety and Health \(Amendment\) Act 2022](#) (Amended OSHA) was passed by the Parliament and gazetted on 16 March 2022, which will introduce amendments to the OSHA 1994. At this stage, the Amended OSHA has yet to come into force on a date to be appointed by the Minister of Human Resources. The amendments include extending the applicability of the Amended OSHA to all places of work throughout Malaysia except for domestic workers, armed forces and for work on board ships.

The [Factories and Machinery \(Repeal\) Act 2022](#) was passed by the Parliament and gazetted on 16 March 2022, which will repeal the FMA 1967 and integrate the OSHA and FMA provisions into one comprehensive health and safety legislation. There are specified directions and pending applications under FMA 1967, among others, which will subsist once the repeal takes effect.

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## Regulations

### 2 | How are regulations relating to occupational health and safety generally issued in your jurisdiction? What compliance obligations do these regulations generally impose on employers?

The Minister is empowered to make regulations concerning the safety, health, and welfare of workers to achieve the objects of the OSHA 1994 (section 66 OSHA 1994). These regulations prescribe the prohibitions and requirements to be complied with by employers in relation to, among others, the following matters:

- notifications, arrangements to be made for any action or precaution of any accident, dangerous occurrence, occupational poisoning or occupational disease;
- the employment of a safety and health officer;
- the maintenance and preservation of records;
- instructions, training and supervision of persons at work;
- the monitoring of conditions at a place of work including the health of employees;
- the provision of adequate welfare facilities by employers for persons at work; and
- the requirements to examine, test, analyse, label or mark any substance.

## Applicable employers and workers

### 3 | Which employers and workers are subject to the occupational health and safety regime? Are there any notable exclusions?

Employers subject to the regime under the OSHA 1994 include immediate employers, principal employers and self-employed persons, while employees under the OSHA 1994 are defined as persons who are employed for wages under a contract of service or in connection with the work of an industry to which the OSHA 1994 applies. Such employees would include the following:

- employees directly employed by the principal employer;
- employees employed by or through an immediate employer at the place of work or under the supervision of the principal employer;
- employees whose services are temporarily lent or let on hire to the principal employer; and
- independent contractors.

The Amended OSHA extends the applicability of the OSHA to all places of work throughout Malaysia but excludes domestic workers, armed forces and work on board ships.

## Applicable risks

### 4 | Which health and safety risks are covered under the relevant legislation?

The regulations under the OSHA 1994 recognise various health and safety risks, such as the following:

- fatal and non-fatal injury;

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- serious bodily injury such as emasculation, permanent privation of sight, hearing or joints, loss of consciousness, disfiguration of the head or face, fractures, dislocations, amputations, crush injuries, burns, scalding, hypothermia or heat-induced illnesses, electrical injury, acute ill health or any injury that results in the person being admitted immediately into hospital for more than 24 hours;
- dangerous occurrences such as the collapse or failure of structures and equipment, electrical short circuits, explosions, fires, escape of substance or gas;
- occupational poisoning and occupational diseases; and
- exposure to hazardous chemicals and excessive noise.

Apart from the physical aspects of such health risks, the OSHA 1994 is intended to promote an occupational environment to also meet the psychological needs of workers. The Guidelines on OSHA 1994 define health as a state of complete physical, mental and social well-being and not merely the absence of disease. Under the Amended OSHA, the Minister may regulate and require employers and occupiers to monitor the physiological and psychological needs and health of their employees.

An employment injury is defined under the Employees Social Security Act 1969 (ESSA 1969) as a personal injury to an employee caused by an accident or an occupational disease arising out of and in the course of their employment in an industry. The ESSA 1969 recognises that 'accidents when travelling' or 'accidents happening while meeting emergency' and various occupational diseases may be deemed to be an employment injury arising out of and in the course of employment (Sections 24, 25 and 28 of the ESSA 1969).

The question as to whether such accidents arose during their employment will depend on the facts of each case. The words 'in the course of his employment' must necessarily mean 'in the course of his work', which the worker is employed to do and includes some risks incidental to the duty of the service (*Ketua Pengarah Pertubuhan Keselamatan Sosial v Vadivelan a/l Sandara Saigara* [2009] 1 MLJ 238).

## Authorities

### 5 | What government authorities are charged with the enforcement and administration of the occupational health and safety regime in your jurisdiction? What is the extent of their activities and powers?

The Department of Occupational Safety and Health (DOSH) is a government department under the Ministry of Human Resources. The DOSH is responsible for administering and enforcing the legislation relating to occupational safety and health.

At the federal level, the DOSH is composed of various divisions responsible for corporate services, industrial safety, international policy and research, forensic engineering, building constructions safety, chemical management, petroleum safety, industrial hygiene and ergonomics, occupational health, small and medium-sized industries and non-factory sectors and legal advisory. The federal branch is led by the federal Director-General of the DOSH.

Below the federal level are state branches of the DOSH around Malaysia. Each state branch is headed by its respective state Director-General, who oversees various departments responsible for inspections, industrial hygiene, investigation and prosecution, small and

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medium industries, analysis and processing, special risks and promotion and resources. These departments are answerable to their respective state Director-General, who will then report to the Director-General at the federal branch.

The National Council for Occupational Safety and Health (NCOSH) under the Ministry of Human Resources is a federal body responsible for determining the direction and policy of the state in relation to occupational safety and health in Malaysia. The NCOSH is composed of representatives of ministries and organisations.

### Soft law and guidance

#### 6 | Has the government issued any guidance or codes of practice relating to occupational health and safety in your jurisdiction? What force do these have and how are they implemented in practice?

Yes. The DOSH has published various guidelines covering occupational health, industrial safety, industrial hygiene, ergonomic issues, chemicals, agriculture, forestry and fishing and building construction and engineering work. Guidelines published by the DOSH are not mandatory or legally binding.

The DOSH has also published various industry codes of practice, such as those relating to chemical management, industrial hygiene, occupational health and transportation. These codes of practice are approved by the Minister and implemented to provide practical information for employers to fulfil their obligations to ensure the safety, health and welfare of their employees. If a person has contravened or failed to comply with the OSHA 1994 or its regulations in relation to an approved industry code of practice, the failure to observe the provisions of the approved industry code of practice can be used as evidence by the prosecution in court proceedings.

Under certain conditions, employers shall appoint a safety and health officer and establish a safety and health committee at their places of work to ensure that these guidelines and codes of practice are observed.

## EMPLOYER DUTIES AND RESPONSIBILITIES

### Primary duty

#### 7 | What is the nature and extent of the employer's primary duty to protect workers' health and safety under the relevant legislation? How is this duty observed and interpreted in practice?

Every employer (including self-employed persons) has a duty to ensure, so far as is practicable, the safety, health and welfare of all its employees at work (section 15 Occupational Safety and Health Act 1994 [OSHA 1994]). These duties extend to the following matters:

- the provision and maintenance of plant and systems of work that are safe and without risks to health;

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- the making of arrangements for ensuring the safety and absence of risks to health in connection with the use of operation, handling, storage and transport of plant and substances;
- the provision of such information, instruction, training and supervision as is necessary to ensure the safety and health at work of the employees;
- the maintenance of the condition of any place of work under the control of the employer or self-employed person so that it is safe and without risks to health and the provision and maintenance of the means of access to and egress from it that are safe and without such risks; and
- the provision and maintenance of a working environment for its employees that is safe, without risks to health, and adequate as regards facilities for their welfare at work.

Employers also have a duty to formulate a safety and health policy at work and to state the organisation and arrangements for implementing the policy (section 16 of OSHA 1994).

Further to the above, the Amended OSHA also includes the duty of employers to develop and implement procedures for dealing with emergencies that may arise while their employees are at work.

The question of 'practicable' depends on the severity of the risk in question, knowledge about the risk and ways to remove or reduce it, the availability and suitability of ways to remove or reduce it, as well as costs to remove or reduce it. Common practice and knowledge throughout the industry should be taken into account when making any judgment of whether a safeguard is practicable.

Under the Amended OSHA, employers have an additional duty to conduct and implement risk assessments in relation to safety and health risks, and to appoint an occupational safety and health coordinator. The coordinator's role is to coordinate occupational safety and health issues at the place of work, as opposed to the role of a safety and health officer who is responsible for ensuring the observance of the provisions of the Act and any regulation made under it (section 29 of OSHA 1994).

### Third parties

#### 8 | Does the employer owe a duty to protect the health and safety of third parties? If so, what is the nature and extent of this duty?

Yes. According to section 17 of the OSHA 1994, employers have a duty to ensure, so far as is practicable, that persons other than their employees are not exposed to any health and safety risk. Such persons include visitors and third parties to the premises. It should be noted that such duties are only owed towards persons who have entered the premises with the permission of the employer. Those who enter the premises without permission are considered trespassers and are not covered under section 17 of the OSHA 1994.

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## Work premises

### 9 | What is the nature and extent of the employer's duty to ensure safe work premises?

Section 15(2)(d) of the OSHA 1994 requires employers to ensure that all workplaces (such as the building, structure, vehicle and all plant; the physical environment, such as lighting, ventilation, dust, heat and noise; and the psychological environment) under their control are safe and healthy. Furthermore, the employer is required to provide adequate welfare facilities for its employees at work. It should be noted that employees cannot be required to pay for employee welfare facilities such as a first aid box (section 26 OSHA 1994).

## Plant and equipment

### 10 | What are the employer's duties and responsibilities regarding the provision of safe plant and equipment?

A 'plant' is defined under the OSHA 1994 to include any machinery, equipment, appliance, implement or tool, any component thereof and anything fitted. Employers must ensure that all machinery is of sound construction and sound material free from defects, suitable for the purpose, properly maintained and that the requisite certificates of fitness are obtained for the plants where prescribed.

The duty to provide a safe plant does not depend on whether the plant is in use (*Bolton MBC v Malrod Installations Ltd* [1993] ILR 358). In this case, a decontamination unit had been installed by a contractor hired to remove asbestos. The day before he started work an inspector found electrical faults. It was held that the defendant was under a duty to ensure that the decontamination unit would be safe when the employees came to use it.

## Work systems, training and supervision

### 11 | What are the employer's duties and responsibilities regarding the provision of safe work systems and adequate training and supervision?

Employers have a duty to maintain a plant and systems of work, as far as is practicable, so that they are safe and without risks to health (section 15(2)(a) OSHA 1994). According to the Guidelines on OSHA 1994, a safe system of work is one that, under the circumstances, makes adequate provision for the safety of employees and, if carried out with reasonable care, protects employees from foreseeable risks of injury.

In this regard, employers are required to provide information, instruction, training and supervision as is necessary to ensure the safety and health at work of its employees (section 15(2)(c) OSHA 1994). For example, an employer who undertakes work that may, or is likely to, expose its employees to hazardous chemicals, must provide them with such information, instruction and training as may be necessary to enable them to know the risks to health and the precautions to be taken.

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Employers shall also ensure that the exposure of employees to hazardous chemicals is monitored in accordance with an approved method of monitoring and analysis. The monitoring of exposure shall be conducted by a hygiene technician.

## Accident response and reporting

### 12 | What rules and requirements govern employers' response to and reporting of workplace accidents?

Employers are required to report any accident, dangerous occurrence, occupational poisoning or disease that has occurred or is likely to occur at the place of work, to the nearest Department of Occupational Safety and Health (DOSH) office (section 32 OSHA 1994). Upon notifying the nearest DOSH office, employers are required to send a report thereof in an approved form within seven days of the notification (Regulation 5 of the [Occupational Safety and Health \(Notification of Accident, Dangerous Occurrence, Occupational Poisoning, and Occupational Disease\) Regulations 2004](#)). The obligation to report accidents and dangerous occurrences is also provided in other legislation, such as the Factories and Machinery Act 1967 (section 31), Petroleum (Safety Measures) Act 1984 (section 22) and [Electricity Supply Act 1990](#) (section 33).

Where safety and health officers are employed for purposes of ensuring the due observance at the place of work, an employer shall direct a person who has direct control of activities at the place to work to assist the safety and health officer in any investigations of accidents, near-miss accidents, dangerous occurrences, occupational poisoning and diseases.

After the occurrence of any accident, near-miss accident, dangerous occurrence, occupational poisoning or occupational disease at the place of work, the safety and health committee shall inspect the place of work as soon as it is safe to do so. Subsequently, the safety and health officer would furnish the chairman of the committee with a report of his findings, following which a committee meeting would take place to discuss the report. Such report shall be kept for a minimum of seven years (Regulations 13 and 14 of the [Occupational Safety and Health \(Safety and Health Committee\) Regulations 1996](#)).

## Risk assessments

### 13 | What rules, requirements, procedures and best practices should employers be aware of when conducting occupational risk and hazard assessments?

In 2008, the DOSH published the Guidelines for Hazard Identification, Risk Assessment, and Risk Control to provide information on the methodology for the assessment of physical hazards. Employers should be aware of the following four steps, which are:

- to classify work activities based on their similarity;
- to identify hazards by highlighting operations of tasks that pose significant risks to the health and safety of employees such as health, safety and environmental hazards;
- to conduct a risk assessment by calculating or estimating the likelihood of occurrence and severity of the hazard; and
- if necessary, to determine whether the risk is tolerable and implement control measures.

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The Amended OSHA has now imposed a statutory duty on employers to conduct and implement risk assessment.

### Disclosure and reporting requirements

**14** | Are employers required to submit regular health and safety reports to the relevant authorities? If so, what is the nature and extent of this requirement?

Employers are not required to submit health and safety reports on a regular basis to the relevant authorities under the OSHA 1994. A report is only required to be sent to the relevant authorities in the event that an accident, dangerous occurrence, occupational poisoning or disease has occurred or is likely to occur.

Safety and health officers appointed are required to submit health and safety reports to their employers before the 10th of a preceding month. While it is not mandatory for these reports to be submitted to the public authorities regularly, these records ought to be retained by employers for at least five years for an officer to inspect or investigate them if necessary.

### Provision of information to workers

**15** | What requirements apply regarding the provision of health and safety information to workers?

Employers are required to provide information to their employees to enable them to know the potential health risks arising from occupational and safety hazards and the precautions to be taken. Such information would include factual material about occupational and safety hazards and precautionary, preventive, response, mitigative and other measures for securing occupational safety and health.

For instance, in respect of exposure to hazardous chemicals, employers are required under the Occupational Safety and Health (Use and Standard of Exposure of Chemicals Hazardous to Health) Regulations 2000 to furnish the following information:

- results of any monitoring of exposure at the place of work;
- collective results of any health surveillance programme undertaken; and
- chemical safety data sheets for each hazardous chemical obtained from the supplier.

### Insurance requirements

**16** | What insurance must employers carry to cover liability for occupational health and safety risks?

The Employees Social Security Act 1969 (ESSA 1969) states that all employees in industries to which the Social Security Organisation of Malaysia (SOCSO) applies, regardless of wage level, shall be insured. The contributions payable by employers and employees to the SOCSO shall cover contingencies of invalidity and employment injury.

The SOCSO is a government institution that provides and manages, among others, employment injury insurance schemes. An employment injury insurance scheme provides

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protection to an employee against accidents or occupational diseases arising out of and in the course of their employment.

Foreign workers are also covered by the employment injury insurance scheme under the SOCSO, subject to the fulfilment of the eligibility requirements. Under this scheme, foreign workers may qualify for medical, disablement and rehabilitation benefits.

It should be noted that Section 31 of the ESSA 1969 provides that where an employee receives SOCSO compensation for an employment injury under the Act, the employee is not entitled to receive any compensation or damages from the employer under any other law in force. The Federal Court has applied this provision strictly such that Section 31 bars any other claims for the same employment injury under written law and common law (See *Tan Peng Loh v Lee Aik Fong & Anor* [1982] 1 MLJ 74 and *Che Noh Bin Yacob v Seng Hin Rubber (M) Sdn Bhd* [1982] 1 MLJ 80). However, the law is uncertain as to whether there are exceptions, such as in cases of gross negligence (see Court of Appeal case of *Rajendiran A/L Manickam & Anor v Palmamide Sdn Bhd* [2020] 9 CLJ 510).

### Other duties and responsibilities

#### 17 | Are employers subject to any other notable health and safety duties and responsibilities in your jurisdiction?

Employers are required to formulate occupational safety and health policies and make arrangements for implementing these policies. These policies have three components – to outline the overall philosophy and intent of the employer’s commitment to safety and health, to demonstrate responsibility for safety and health in hierarchical management structures and to ensure that the policy is being followed at the workplace.

Employers shall also establish a safety and health committee if there are 40 or more persons employed at the place of work. Functions of the committee would include:

- assisting in the development of safety and health rules and safe systems of work;
- reviewing the effectiveness of safety and health programmes;
- carrying out studies on the trends of workplace accidents; and
- reviewing the safety and health policies at the workplace and making recommendations for any revision of such policies.

Under the Amended OSHA, for specified places of work published in the Gazette, an employer is required to appoint one of its employees to act as an occupational safety and health coordinator whose role is to coordinate occupational safety and health issues at the place of work.

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## WORKER DUTIES, RIGHTS AND RESPONSIBILITIES

### Primary duty

**18** | What is the nature and extent of a worker's duty to protect their own and others' health and safety under the relevant legislation and regulatory framework?

Section 24 of the Occupational Safety and Health Act 1994 (OSHA 1994) requires employees to take reasonable precautions for the safety and health of themselves and other workers who may be affected. This duty varies depending on the employee's status. It is sufficient to state that the duty of reasonable care would be assessed based on the employee's level of training and the standard of reasonable care that is expected of the person. Furthermore, it is critical for employees and employers to work together to ensure a safe and healthy workplace. For instance, employees are required to follow instructions stated in the health and safety policies issued by employers. If an employer has set up a safe system of work and has done all that is reasonable to maintain it, then any employee who through their own misconduct endangers themselves would be considered non-cooperative.

Section 25 of the OSHA 1994 also includes an employee's duty not to interfere with or misuse things provided or done in the interests of safety, health and welfare.

### Consultation and collaboration with employers

**19** | Are workers in your jurisdiction entitled or required to consult and collaborate with their employer in relation to the development and implementation of health and safety measures and policies?

Yes. The OSHA 1994 provides for the establishment of safety and health committees at workplaces consisting of, among others, representatives of employers and employees. The representatives of employees must represent the various sections of a place of work. This committee will provide consultation to employers to enable them to cooperate with their employees in promoting and developing measures for safety and health at the workplace and to check the effectiveness of such measures.

### Trade unions

**20** | What role do trade unions play in protecting occupational health and safety in your jurisdiction?

Trade unions are not entitled to take any action against their members, being employees, who perform their duties as members of the safety and health committee (section 27 OSHA 1994). This is necessary to allow the employees to perform their duties independently.

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## Whistle-blowing

### 21 | Are workers afforded any legal protections against reprisals for whistle-blowing in relation to occupational health and safety risks?

According to section 7 of the [Whistleblower Protection Act 2010](#), workers will be granted whistle-blower protection, such as confidentiality protection, immunity from civil and criminal action and protection from adverse action.

## Right to refuse work

### 22 | Do workers have the right to refuse work or seek reassignment in hazardous situations?

OSHA 1994 does not expressly confer the right of an employee to refuse work or seek reassignment in hazardous situations. If an employee makes a complaint about a matter that they consider is not safe or poses a health risk, they shall not be dismissed, injured in their employment or have their position altered to their detriment for that reason (section 27 OSHA 1994).

Nevertheless, the Occupational Safety and Health (Amendment) Act 2022 (Amended OSHA) now includes the right of employees to remove themselves from the danger or the work if they have reasonable justification to believe there exists an imminent danger and the employer fails to take any action to remove the danger.

## HAZARDS AND RISKS

### Hazardous substances and chemicals

### 23 | What occupational health and safety rules govern the handling and use of hazardous substances and chemicals? What are the practical implications of these rules?

The [Occupational, Safety and Health \(Use and Standards of Exposure of Chemicals Hazardous to Health\) Regulations 2000](#) and the [Occupational Safety and Health \(Classification, Labelling and Safety Data Sheet of Hazardous Chemicals\) Regulations 2013](#) govern the handling and use of hazardous substances and chemicals.

An employer is under a duty in respect of any other person who may be affected by the work activity of the employer, such as its employees. These duties include:

- registering all chemicals hazardous to health used in the place of work;
- ensuring that all hazardous chemicals are labelled and that chemical safety data sheets are provided;
- ensuring that the exposure of any person to hazardous chemicals is within the permissible exposure limit;
- carrying out assessments of the risks created by the chemical to the employee;
- implementing control measures;

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- carrying out health surveillance programmes where necessary;
- providing information, instruction and training to employees of the risks to health and the precautions to be taken; and
- ensuring that warning signs are posted in conspicuous places.

Employees are also required to use protective equipment and clothing and to comply with instructions or measures under the Occupational Safety and Health Act 1994 (OSHA 1994) and its regulations.

Employers and employees who fail to comply with these duties under the OSHA 1994 can be found guilty of offences.

## Heavy machinery

### 24 | What occupational health and safety rules govern the operation of heavy machinery? What are the practical implications of these rules?

The legislations in Malaysia governing the operation of machinery generally are the Factories and Machinery Act 1967 (the FMA 1967) and the OSHA 1994 and their respective regulations. The FMA 1967 regulates the operation of heavy machinery such as steam boilers, unfired pressure vessels, fired pressure vessels, pipelines, prime movers, gas cylinders, gas holders, hoisting machines and tackle, transmission machinery, driven machinery, materials handling equipment, amusement device or any other similar machinery and any equipment for the casting, cutting, welding or electro-deposition.

The FMA 1967 imposes obligations on the owners and occupiers of factories and machinery relating to the safety, health and welfare of persons and the operation, registration and use of factories and machinery. Such owners and occupiers can be held liable for offences if they contravene the Act or its regulations.

On the other hand, the OSHA 1994 imposes obligations on designers, manufacturers, importers and suppliers to ensure that a plant for use at work (including machinery) is designed and constructed to be safe and without risk to health. They are required to carry out testing and examination of the machinery, issue instructions on the proper use of the machinery to the employer and carry out the necessary research to discover and eliminate or minimise any risk to safety or health that their design or machinery might cause.

It should be noted that the [Factories and Machinery \(Repeal\) Act 2022](#) was passed by the Parliament and gazetted on 16 March 2022, which will repeal the FMA 1967 and integrate the OSHA and FMA provisions into one comprehensive health and safety legislation.

Once the repeal of the FMA 1967 is in effect, any registration made or order, notice, direction, written authority, approval, certificate of fitness, special scheme of inspection or certificate of competency given or issued under the FMA 1967 shall be dealt with under the OSHA 1994. Further to that, there are specified types of pending applications under the FMA 1967 that shall continue to be dealt with under the FMA 1967, as if it had not been repealed.

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## General machinery

### 25 | What occupational health and safety rules govern the operation of general machinery in the workplace?

The FMA 1967 and its regulations govern the use, operation and installation of machinery. All machinery and every part thereof shall be of sound construction and sound material free from defect and suitable for purpose and be properly maintained. Where a certificate of fitness is prescribed, a valid certificate of fitness must be issued under the FMA 1967 for a person to operate any machinery.

The OSHA 1994 also states that machinery must be designed and constructed to be safe and without risk to health. Designers, manufacturers, importers and suppliers are required to carry out testing and examination of the plant, issue instructions on the proper use of the plant to the employer and carry out the necessary research to discover and eliminate or minimise any risk to safety or health that their design or machinery might cause.

Dangerous parts of any machinery must be securely fenced by a form of protective device designed to prevent serious bodily injury or bodily injury to any person, which includes a guard and a guard rail. Guards should be designed, constructed and used so that they will:

- provide positive protection;
- prevent access to the danger zone during operation;
- cause the operator no discomfort or inconvenience;
- withstand long use with minimum maintenance;
- resist normal wear and shock; and
- not constitute a hazard by themselves such as splinters, sharp corners or rough edges.

It should be noted that the Factories and Machinery (Repeal) Act 2022 was passed by the Parliament and gazetted on 16 March 2022, which will repeal the FMA 1967 and integrate the OSHA and FMA provisions into one comprehensive health and safety legislation.

Once the repeal of the FMA 1967 is in effect, any registration made or order, notice, direction, written authority, approval, certificate of fitness, special scheme of inspection or certificate of competency given or issued under the FMA 1967 shall be dealt with under the OSHA 1994. Further to that, there are specified types of pending applications under the FMA 1967 that shall continue to be dealt with under the FMA 1967, as if it had not been repealed.

## Lock-out and tag-out

### 26 | What occupational health and safety rules govern how employees are protected while performing service and maintenance on machinery and equipment? Any there any exceptions to these rules?

The [Electricity Regulations 1994](#) provide that only a competent person or a person acting under the control of a competent person shall undertake to carry out any maintenance, repair, replacement, servicing or cleaning of any equipment that forms part of an installation. A competent person is someone who holds a certificate of competency and is recommended

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by an electrical services engineer, competent electrical engineer or an electrical supervisor to undertake such works.

Any person engaged in work in connection with any installation or equipment shall ensure that the switch of a circuit shall be locked in an 'off' position until the work is finished. In cases of aerial line and underground cabling works, a notice shall be hung on the switch to warn persons to stay clear of the circuit and be warned that the circuit is to be made live.

### Ergonomic risks and eye strain

#### 27 | What rules and measures apply to manage ergonomic risks and eye strain in the workplace?

The [Factory and Machinery \(Safety, Health and Welfare\) Regulations 1970](#) provide regulations to ensure that seating facilities, work benches or worktables for persons employed in factories are of a design construction and dimensions suitable for them. No person shall also be employed to lift, carry or move any load so heavy as to be likely to cause bodily injury to them (section 12 FMA 1967).

The Department of Occupational Safety and Health (DOSH) has published several guidelines to provide practical and helpful solutions to the ergonomic problems faced by employees. These guidelines include Guidelines on Occupational Safety and Health for Standing at Work, for Seating at Work, on Occupational Vibration and on Manual Handling.

In addition to ergonomic issues, employees in an office setting can be exposed to sore eyes and eye strain from working with video display unit screens for long hours. In this regard, the Guidelines for Working with Video Display Units (VDU) issued by the DOSH provide strategies to reduce VDU-related risks that include making arrangements to the workplace design, equipment and system and provisions for training and medical examinations for employees.

### Noise and temperature

#### 28 | What rules and measures apply to manage risks arising from workers' exposure to noise and temperature extremes?

The [Occupational Safety and Health \(Noise Exposure\) Regulations 2019](#) and [Factories and Machinery \(Noise Exposure\) Regulations 1989](#) protect employees from exposure to excessive noise. Employers and occupiers are required to take measures to reduce excessive noise by identifying the excessive noises, providing a personal hearing protector, hearing protection zones and carrying out audiometric testing.

For extreme temperatures at workplaces, the [Factory and Machinery \(Safety, Health and Welfare\) Regulations 1970](#) provide that any building constructed wholly or partly of materials having a high coefficient of heat transmission that are subject to the heat of the sun shall be lined with suitable insulating material or coated with white paint, white-wash or other heat-reflecting material or so lined and coated.

The Guidelines on Occupational Safety and Health in the Office published by the DOSH note that almost all offices in Malaysia use air-conditioning systems to maintain a comfortable

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temperature and most people work comfortably at a temperature between 20 and 26 degrees Celsius. These Guidelines recommend that windows, skylights or glass partitions in offices should not allow excessive temperatures during hot weather.

## Fire risks

### 29 | What rules, restrictions and procedures govern the assessment and management of fire risks in the workplace?

Fire safety standards in Malaysia are governed by the [Fire Services Act 1988](#) and the Uniform Building By-Laws 1984 under the [Streets, Drainage and Building Act 1974](#).

The [Fire Services Act 1988](#) provides for fire-hazard abatement arrangements to be taken by the fire services authorities and storage of water and fire hydrants. The Uniform Building By-Laws 1984 set out the fire requirements of buildings including the provision of fire alarms, fire detection, fire extinguishment and firefighting access facilities.

## Psychiatric harm from stress, abuse and violence

### 30 | What rules and measures apply to prevent and address psychiatric harm arising from workplace stress, abuse and violence?

The purpose of the OSHA 1994 includes promoting an occupational environment for persons at work to meet their physical and psychological needs. There are no comprehensive regulations issued pursuant to the OSHA 1994 to address psychiatric harm suffered by workers. However, the Occupational Safety and Health (Amendment) Act 2022 (Amended OSHA) now provides that the Minister may regulate and require the monitoring of the physiological and psychological needs of employees. That said, the DOSH has issued guidelines that deal with these problems.

The DOSH issued a Guidance on the Prevention of Stress and Violence at the Workplace to provide a proactive and participatory approach to preventing and reducing the causes of work-related stress and violence. This Guidance identifies hazards and situations at risk of stress and violence subject to the nature and characteristics of the work. For example, inflexible and long working hours are a stressor on working time. Further, working with valuables and cash handling may expose workers to violent crimes. This Guidance also explores methods to improve workplace arrangements and practices and to activate effective reporting, recording and evaluation systems.

The [Employment Act 1955](#) also contains specific provisions for the regulation of working time, including rest days, the length of working hours, rest breaks, shift work and the maximum number of hours of overtime allowed. In addition, this Act also provides protection for workers against sexual harassment and outlines the procedures for inquiries to be conducted by employers into complaints of sexual harassment.

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## Special categories of worker

### 31 | Are there any notable rules or procedures providing additional health and safety protection to special categories of worker?

The OSHA 1994 does not contain express provisions applicable to special categories of workers. The Act is intended to protect all employees defined as persons employed for wages under a contract of service on or in connection with the work of an industry.

There are regulations which include provisions that deal with the health and safety of pregnant employees:

- Regulation 28(2) of the Occupational Safety and Health (Use and Standards of Exposure of Chemicals Hazardous to Health) Regulations 2000 provides for medical removal protection of pregnant or breastfeeding employees;
- Regulations 34(e), 41(c) and 43 of the [Factories and Machinery \(Lead\) Regulations 1984](#), according to which the employer is obliged to provide for special biological monitoring and medical removal protection of female employees of childbearing capacity; and
- The [Atomic Energy Licensing \(Basic Safety Radiation Protection\) Regulations 2010](#) provide for special conditions for pregnant workers, such as on the dose limit of exposure.

The DOSH issued a Guidelines on Reproductive Health Policy & Programmes at the Workplace to provide guidance for identifying and managing potential occupational reproductive health hazards, to promote a safe, healthy and productive work environment and to specifically reduce teratogenic, mutagenic, carcinogenic and material risks. The components of the Guidelines include the development of a reproductive health policy and programmes in the workplace, the identification of reproductive health hazards and risk assessment and the management of reproductive health hazards.

## Other hazards and risks

### 32 | Are there any notable rules, restrictions or procedures applicable to other occupational hazards and risks in your jurisdiction?

Sleeping while on duty compromises the health and safety of workers at a workplace. The seriousness of the consequences resulting from sleeping on duty depends on the nature of the work. For occupations such as pilots, air traffic controllers, security guards, lifeguards or those operating machinery, the act of the employee sleeping on the job could pose a huge risk to the health and safety of others, which may cause serious injury, death or environmental disasters.

Drug and alcohol abuse in the workplace has also been found to contribute to workplace accidents. The OSHA 1994 does not expressly deal with occupational hazards such as drug and alcohol abuse. Nevertheless, the DOSH has published the Guidelines On Preventing and Responding to Drug and Alcohol Problems in the Workplace and the Code of Practice on Prevention and Eradication of Drug, Alcohol and Substance Abuse in the Workplace 2005. It is crucial for employers to prepare written policies on the abuse of illegal substances to instil awareness within the organisation of the repercussions so that every worker can take precautionary steps to prevent these issues.

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## ENFORCEMENT

### Inspections and investigations

- 33** | What rules and procedures govern the enforcement authorities' inspection of workplaces and investigation of employers for health and safety violations?

Officers of the Department of Occupational Safety and Health (DOSH) are conferred with wide powers of enforcement and investigation that include powers of entry, seizure, inspection and the examination of witnesses (Part XI, Occupational Safety and Health Act 1994 [OSHA 1994]).

### Cooperating with authorities

- 34** | What best practices and practical considerations should employers bear in mind when cooperating with and responding to inspections and investigations by the health and safety authorities?

Employers are duty-bound to provide assistance to the DOSH, which may require for any entry, inspection, examination or inquiry or for the exercise of their powers under the said Act (section 46 OSHA 1994). Employers that fail or refuse to provide such assistance commit an offence upon which such person may be liable to a fine or to imprisonment (section 47 OSHA 1994).

### Penalties and notices

- 35** | What administrative penalties and notices may the authorities impose on employers for health and safety violations? Can these be appealed?

The health and safety authorities are empowered to issue an improvement notice if the officer is of the opinion that a place of work, plant, substance or process is likely to be a danger, is likely to cause bodily injury, is a serious risk to the health of any person or is likely to cause damage to any property (section 48(1) OSHA 1994). The improvement notice would require the person to take measures to remove the danger or rectify any defect.

If the officer is of the opinion that the defect is likely to cause immediate danger to life or property, they may also issue a prohibition notice to prohibit the use or operation of a place of work, plant, substance or process until such time that any danger is posed is removed and the defect made good to the satisfaction of the officer (section 48(2) OSHA 1994).

A person who is aggrieved by such notices may appeal to the Director-General or the appeal committee appointed by the Minister. After considering the appeal, the Director-General may confirm, revoke or vary the notice by an order in writing (section 50 OSHA 1994).

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## Civil liability

### 36 | What is the extent of the employer's civil liability for health and safety violations? Can this liability be limited in any way? What defences apply?

The OSHA 1994 is a piece of legislation that imposes criminal liability. Section 59 of the OSHA 1994 provides that a civil action cannot be taken against any party if there is a breach of duty of employers in respect of the responsibilities of an employer, occupiers, manufacturers, designers, suppliers, employees and trade unions.

Nevertheless, this limitation under section 59 does not affect a right of action arising or civil proceedings taken with respect to breaches of duties imposed by other legislation regarding safety and health and common law. As such, an employer can be exposed to civil claims for damages for negligence under the realm of common law.

On the other hand, the exposure of owners, occupiers, engineers, dredgemasters, drivers or other persons to criminal and civil liability remains unaffected under the Factories and Machinery Act 1967.

## Criminal liability

### 37 | May employers be criminally liable for health and safety violations? What defences apply?

Yes, an employer may be prosecuted for contravening the provisions of the OSHA 1994 or its regulations. An employer that is found guilty of offences under the OSHA 1994 shall be held liable to fines, to imprisonment or to both.

The offences under OSHA 1994 are predominantly of strict liability nature, for example, the offences of not appointing a safety and health officer and a safety and health committee (see Sections 29 and 30). However, there are also offences which involve different tests and factors to consider in establishing whether an offence has been committed. For example, it is an offence under Section 15 if the employer fails to ensure, 'so far as is practicable', the safety, health and welfare of their employees. The question of practicability takes into account the severity of the risk in question, knowledge about the risk and ways to remove or reduce it, the availability and suitability of ways as well as costs to remove or reduce it.

## Director and officer liability

### 38 | To what extent may company directors and officers be held liable for health and safety violations?

Where a body corporate contravenes the provisions of the OSHA 1994, every person who at the time of the commission of the offence is a director, manager, secretary or other officer of the body corporate can also be held liable for breaching the provisions of the Act (section 52(1) OSHA 1994). The director, manager, secretary or officer of the body corporate can be charged jointly in the same court proceedings with the body corporate or severally. In this scenario, the director, manager, secretary or other officer of the body corporate will be deemed to be guilty of the offence.

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The Occupational Safety and Health (Amendment) Act 2022 (Amended OSHA) has expanded the list of officers of the body corporate to include compliance officer, partner and manager.

## UPDATE AND TRENDS

### Recent developments

#### 39 | What have been the most significant recent occupational health and safety developments in your jurisdiction, including any notable court decisions and regulatory actions?

The Occupational Safety and Health (Amendment) Act 2022 (Amended OSHA) was passed by the Malaysian Parliament to amend the Occupational Safety and Health Act 1994 (OSHA 1994). The Amended OSHA has yet to come into force on a date to be appointed by the Minister of Human Resources.

The key changes introduced in the Amended OSHA include the following:

- the application of the Amended OSHA will be extended to all places of work throughout Malaysia, in contrast with the existing OSHA 1994, which applies to only specific industries under the First Schedule of OSHA 1994;
- the scope of an employer's duties is expanded to include developing and implementing procedures for dealing with emergencies that may arise at a workplace, conducting safety and health risk assessments and implementing risk controls to eliminate and reduce safety and health risks;
- the Amended OSHA includes duties on principals (defined as 'persons who in the course of or for the purposes of trade, business, profession or undertaking contracts with a contractor for the execution by or under the contractor of the whole or any part of any work undertaken by the principal') to ensure the safety and health of persons working under the principal's directions;
- the appointment of a safety and health coordinator;
- employees have the right to remove themselves from danger or work if they believe there is an imminent danger at their place of work if the employer fails to take action to remove the same; and
- increase in penalties for fines imposed against employers and principals from 50,000 ringgit to 500,000 ringgit.

Further, the Factories and Machinery (Repeal) Act 2022 was passed by the Malaysian Parliament to repeal the Factories and Machinery Act 1967 (the FMA 1967). As such, the Amended OSHA seeks to integrate the provisions in the OSHA 1994 and FMA 1967 into one comprehensive safety and health legislation.

In addition, the [Anti-Sexual Harassment Act 2022](#) was passed by the Dewan Rakyat and gazetted on 18 October 2022. Currently, this Act has yet to come into force on a date to be appointed by the Minister. The Act provides for a right of redress for any person who has been sexually harassed, the establishment of a Tribunal for Anti-Sexual Harassment and to promote awareness of sexual harassment.

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# SKRINE

[Shannon Rajan](#)

shannonrajan@skrine.com

[Laarnia Rajandran](#)

laarnia@skrine.com

Level 8 Wisma UOA Damansara, 50 Jalan Dungun  
Damansara Heights, Kuala Lumpur 50490, Malaysia  
Tel: +60 3 20 813 999  
[www.skrine.com](http://www.skrine.com)

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# Philippines

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[Villaraza & Angangco](#)

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## LEGAL FRAMEWORK

### Legislation

- 1 | What legislation governs occupational health and safety in your jurisdiction? Are there any notable sector-specific laws or exclusions from the primary legislation?

The Philippine Labor Code, Republic Act (RA) No. 11058 (the Occupational Safety and Health Law) (the OSH Law) and its implementing rules and regulations (IRR) issued by the Department of Labor and Employment (DOLE) through Department Order No. 198 series of 2018, as well as the Occupational Safety and Health Standards (OSHS), also issued by DOLE, primarily govern occupational health and safety in the Philippines.

Additionally, RA No. 11036, otherwise known as the Mental Health Act (and its implementing rules and regulations), addresses mental health in the workplace.

Further, Department Order No. 18 series of 2017, or the rules on the administration and enforcement of labour laws pursuant to the visitor and enforcement powers of the Secretary of DOLE, govern the procedures in the conduct of inspection, mandatory conference, issuance of compliance orders and execution thereof to ensure compliance with occupational health and safety standards.

### Regulations

- 2 | How are regulations relating to occupational health and safety generally issued in your jurisdiction? What compliance obligations do these regulations generally impose on employers?

DOLE is the lead government agency charged with the enforcement and administration of laws, policies, and programmes regarding occupational health and safety. Accordingly, DOLE is empowered to issue regulations regarding occupational health and safety.

Under the OSH IRR, the employer is required to comply with the following obligations, among others:

- registration of establishment with DOLE;
- provision of job safety instruction or orientation before work;

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- provision of workers' training (first aid, mandatory workers' training, mandatory OSH training for safety officers and health personnel);
- provision of safety signage and devices;
- provision of medical supplies, equipment and facilities;
- submission of reportorial requirements as prescribed by the OSHS;
- provision of a safety officer or occupational health personnel;
- provision of certified personnel or professionals required by the OSHS;
- establishment of a health and safety committee;
- formulation and implementation of a comprehensive health and safety programme;
- provision of information on hazards and risks;
- provision of sanitary and welfare facilities;
- use of approved or certified devices and equipment for the task;
- provision of personal protective equipment; and
- adoption of mandatory workplace policies.

### Applicable employers and workers

#### 3 | Which employers and workers are subject to the occupational health and safety regime? Are there any notable exclusions?

The OSH Law applies to all establishments, projects and sites, including Philippine Economic Zone Authority establishments, and all other places where work is being undertaken in all branches of economic activity. However, the OSH Law and its implementing rules do not apply to those working in the public sector, such as national government agencies, government-owned and controlled corporations with original charters, government financial institutions, state universities and colleges and local government units. These entities in the public sector have their own governing rules and regulations on workplace safety issued by other government agencies.

### Applicable risks

#### 4 | Which health and safety risks are covered under the relevant legislation?

Work accidents, injuries and illnesses are covered by the current occupational health and safety regime.

A work accident is understood to be an unplanned or unexpected occurrence that may or may not result in personal injury, property damage, work stoppage or interference or any combination thereof, which arises out of and in the course of employment.

A work injury is any injury or occupational illness suffered by a person, which arises out of or in the course of their employment.

On the other hand, for an illness to be considered as an occupational illness, it must be caused by environmental factors peculiar to a particular process, trade or occupation and to which an employee or worker is not ordinarily subjected or exposed to outside of employment.

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Notably, jurisprudence provides that an injury or accident is said to arise 'in the course of employment' when it takes place within the period of employment, at a place where the employee may be and while they are fulfilling their duties or are engaged in doing something incidental thereto (see *PHHC v WCC*, L-18246, 30 October 1964).

Further, under the Amended Rules on Employees Compensation, for injury and the resulting disability or death to be compensable, the following must concur:

- the employee must have been injured at the place where their work requires them to be;
- the employee must have been performing their official functions; and
- if the injury was sustained elsewhere, the employee must have been executing an order for the employer.

## Authorities

### 5 | What government authorities are charged with the enforcement and administration of the occupational health and safety regime in your jurisdiction? What is the extent of their activities and powers?

DOLE is the primary government agency responsible for the enforcement of occupational health and safety standards.

The Secretary of Labor and Employment or the Secretary's authorised representatives have the authority to enforce the mandatory occupational health and safety standards in all establishments and conduct an annual spot audit on compliance with occupational health and safety standards. The Secretary or the Secretary's duly authorised representatives can enter workplaces at any time of the day or night where work is being performed to examine records and investigate facts, conditions or matters necessary to determine compliance with occupational health and safety standards.

The Secretary of Labor and Employment also has the power to order stoppage of work or suspension of operations of any unit or department of an establishment when non-compliance with the law or implementing rules and regulations poses a grave and imminent danger to the health and safety of workers in the workplace.

Under the OSH IRR, DOLE may impose a fine ranging from at least 20,000 Philippine pesos to 100,000 Philippine pesos per day depending on the violation, for wilful failure or refusal of the employer to comply with occupational health and safety standards.

## Soft law and guidance

### 6 | Has the government issued any guidance or codes of practice relating to occupational health and safety in your jurisdiction? What force do these have and how are they implemented in practice?

In addition to the OSHS, DOLE, from time to time, issues additional regulations regarding occupational health and safety, such as Department Order No. 18 series of 2017 or the rules on the administration and enforcement of labour laws pursuant to the visitor and enforcement powers of the Secretary of DOLE. These govern the procedures in the conduct

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of inspection, mandatory conference, issuance of compliance order and execution thereof. These regulations have the force of law, and non-compliance by employers will subject them to penalties, including imprisonment.

## EMPLOYER DUTIES AND RESPONSIBILITIES

### Primary duty

#### 7 | What is the nature and extent of the employer's primary duty to protect workers' health and safety under the relevant legislation? How is this duty observed and interpreted in practice?

Under the Philippine Labor Code, Republic Act (RA) No. 11058 (the Occupational Safety and Health Law) (the OSH Law) and its implementing rules and regulations (IRR) dictate that employers are mandated to:

- furnish workers with a place of employment free from hazardous conditions that are causing or are likely to cause death, illness or physical harm to the workers;
- give complete job safety instructions or orientation to all workers, especially to those entering the job for the first time, including instructions relating to familiarisation with their work environment;
- inform workers of the hazards associated with the workplace health risks to which they are exposed, preventive measures to eliminate or minimise risk and steps to be taken in the case of emergency;
- only use approved devices and equipment for the workplace;
- comply with Occupational Safety and Health Standards (OSHS), including training, medical examination and, where necessary, the provision of protective and safety devices such as personal protective equipment and machine guards;
- allow workers and their health and safety representatives to participate actively in the process of organising, planning, implementing and evaluating the health and safety programme to improve health and safety in the workplace; and
- provide, where necessary, for measures to deal with emergencies and accidents, including first-aid arrangements.

### Third parties

#### 8 | Does the employer owe a duty to protect the health and safety of third parties? If so, what is the nature and extent of this duty?

Relevant regulations do not explicitly mention that the employer must ensure the health and safety of people that are not employed by it. However, the employer is mandated to maintain a safe workplace. Thus, it can be argued that the employer must at least ensure that the workplace poses no danger to any person within the premises.

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## Work premises

### 9 | What is the nature and extent of the employer's duty to ensure safe work premises?

The OSH IRR define a workplace as any site or location where workers must be present at or go to because of their work, and that is under the direct or indirect control of the employer, including, but not limited to, work areas, employee lounges and restrooms, conference and classroom spaces, employee cafeterias, hallways and emergency access.

The employer is required to equip the workplace so that it is free from hazardous conditions that cause or are likely to cause death, illness or physical harm to the workers. Accordingly, the OSHS require the employer to provide the necessary facilities, such as:

- adequate fire, emergency or danger signage and safety instructions of standard colours and sizes to be visible at all times;
- provisions for handicapped employees;
- good housekeeping;
- personal facilities, such as adequate comfort rooms and lavatories, adequate changing rooms for female workers and locker rooms for male workers; and
- a first-aid treatment room or clinic.

Under the OSH IRR, whenever two or more undertakings are engaged in activities simultaneously in one workplace, it shall be the duty of all concerned to collaborate and cooperate to ensure compliance with the OSHS.

On 13 May 2022, the Department of Labor and Employment (DOLE) issued DOLE Department Order No. 325-2022 or the Rules on Certification of First Aiders and Accreditation of First Aid Training Providers, which outlines the certification procedure for designated first aiders in the workplace and the accreditation process for First Aid Training Providers. Notably, the designated first aider is required to take the minimum certification course based on the establishment's employment size and 'risk' level.

## Plant and equipment

### 10 | What are the employer's duties and responsibilities regarding the provision of safe plant and equipment?

The employer must provide first-aid medical services, take steps to prevent danger to the workers from any live electric cables or equipment either by rendering the cables or apparatus electrically dead or by providing barriers to prevent contact, and all moving parts of machinery used must be guarded. Fire protection equipment and personal protective equipment must also be provided by the employer.

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## Work systems, training and supervision

### 11 | What are the employer's duties and responsibilities regarding the provision of safe work systems and adequate training and supervision?

An employer must establish an occupational safety and health committee (OSH committee) that is entrusted with preventive functions and is responsible for advising the employer and the workers, in the establishment or undertaking of the following:

- the requirements for establishing and maintaining a safe and healthy working environment that will facilitate optimal physical and mental health concerning work; and
- the adaptation of work to the capabilities of workers in light of their state of physical and mental health.

Specifically, the OSH committee shall have the following responsibilities:

- identification and assessment of the risks from health hazards in the workplace;
- surveillance of the factors in the working environment and working practices that may affect the workers' health, including sanitary installations, canteens and housing, where these facilities are provided by the employer;
- advice on planning and organisation of work, including the design of the workplace, on the choice, maintenance and condition of machinery and other equipment, and substances used at work;
- participation in the development of programmes for the improvement of working practices as well as the testing and evaluation of the health aspects of new equipment;
- advice on occupational health, safety and hygiene, and on ergonomics and individual and collective protective equipment;
- surveillance of workers' health concerning work;
- promoting the adaptation of work to the workers;
- collaboration in providing information, training and education in the fields of occupational health, hygiene and ergonomics;
- organising first-aid and emergency treatment; and
- participation in the analysis of occupational accidents and occupational diseases.

## Accident response and reporting

### 12 | What rules and requirements govern employers' response to and reporting of workplace accidents?

All employers are required to submit an employer's work accident or injury report (WAIR) for every accident or illness to the Department of Labor and Employment, as well as an annual work accident or injury exposure data report (AEDR).

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## Risk assessments

### 13 | What rules, requirements, procedures and best practices should employers be aware of when conducting occupational risk and hazard assessments?

Under the Department of Labor and Employment (DOLE) Labor Advisory No. 4 series of 2019, the establishment shall be responsible for determining its own level of risk classification (low, medium or high) based on a Hazards Identification and Risk Assessment and Control (HIRAC) conducted by the company. The HIRAC results and the number of workers shall be the basis for determining the required number of safety officers, occupational health personnel, medical services and facilities.

## Disclosure and reporting requirements

### 14 | Are employers required to submit regular health and safety reports to the relevant authorities? If so, what is the nature and extent of this requirement?

All employers, contractors or subcontractors, if any, shall submit to DOLE all health and safety reports and notifications, such as the annual medical report, OSH committee report, employer's WAIR, annual work AEDR, or any other document required to be submitted by the DOLE.

## Provision of information to workers

### 15 | What requirements apply regarding the provision of health and safety information to workers?

Under the OSH Law and its IRR, workers have the right to be appropriately informed by the employer about all types of hazards in the workplace, and to be provided access to training, education and orientation on chemical safety, electrical safety, mechanical safety, ergonomics and other hazards and risks.

All workers, including new hires, must be provided training and information for all types of hazards in the workplace in a language and dialect that workers can understand.

## Insurance requirements

### 16 | What insurance must employers carry to cover liability for occupational health and safety risks?

All employees under 60 years of age are required to be covered under the government Employees' Compensation Program designed to provide a compensation package to employees and their dependents in the event of work-related sickness, injury, disability or death. Further, employers are also required to enrol their employees in, and make contributions to, the Philippine Health Insurance Corporation for financial assistance in the case of hospitalisation.

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## Other duties and responsibilities

**17** | Are employers subject to any other notable health and safety duties and responsibilities in your jurisdiction?

There are no other notable health and safety duties and responsibilities.

## WORKER DUTIES, RIGHTS AND RESPONSIBILITIES

### Primary duty

**18** | What is the nature and extent of a worker's duty to protect their own and others' health and safety under the relevant legislation and regulatory framework?

The Philippine Labor Code, Republic Act (RA) No. 11058 (the Occupational Safety and Health Law) (the OSH Law) mandates that workers comply with occupational health and safety standards in the workplace. Workers must make proper use of all safeguards and safety devices furnished for their protection. They are obliged to observe instructions to prevent accidents and imminent danger situations in the workplace. The worker shall observe the prescribed steps to be taken in cases of emergency.

Workers must also report to the supervisor any work hazard that may be discovered in the workplace.

### Consultation and collaboration with employers

**19** | Are workers in your jurisdiction entitled or required to consult and collaborate with their employer in relation to the development and implementation of health and safety measures and policies?

The OSH Law requires employers to have an occupational safety and health (OSH) programme. The following must be included in the OSH programme:

- a commitment to comply with OSH requirements;
- general health and safety guidelines related to drugs, disease control and mental health;
- details of company projects;
- the composition of the OSH committee;
- safety training, education and accident reporting; and
- worker welfare facilities, among others.

To ensure the enforcement of and compliance with the OSH programme, employers are required to have an OSH committee. A representative from the workers must also be a member of the OSH committee, and through this committee workers can collaborate with their employer regarding the formulation of health and safety measures and policies.

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## Trade unions

### 20 | What role do trade unions play in protecting occupational health and safety in your jurisdiction?

If the workers in an establishment are organised, then a member of the union will be the workers' representative in the OSH committee.

## Whistle-blowing

### 21 | Are workers afforded any legal protections against reprisals for whistle-blowing in relation to occupational health and safety risks?

Yes, workers who report non-compliance with occupational health and safety standards are afforded protection. Under the OSH implementing rules and regulations (IRR), workers and their representatives shall have the right to report accidents, dangerous occurrences and hazards to the employer, to the Department of Labor and Employment (DOLE) and to other concerned competent government agencies. They shall be free from any form of retaliation for reporting any accident.

## Right to refuse work

### 22 | Do workers have the right to refuse work or seek reassignment in hazardous situations?

Yes, workers are afforded the right to refuse unsafe work. Under the OSH Law and its IRR, the worker has the right of refusal to work without threat or reprisal from the employer if, as determined by DOLE, an imminent danger situation exists.

The employer cannot require the workers to return to work where there is a continuing imminent danger. A worker may also refuse to work until the lifting of a work stoppage order after the employer implements the appropriate corrective measures.

Workers affected by the existence of an imminent danger situation may be temporarily assigned to other areas within the workplace provided there is no impending issue with health and safety.

## HAZARDS AND RISKS

### Hazardous substances and chemicals

### 23 | What occupational health and safety rules govern the handling and use of hazardous substances and chemicals? What are the practical implications of these rules?

Department Order No. 136-14 series of 2014, otherwise known as the Guidelines for the Implementation of Globally Harmonized System in Chemical Safety Program in the

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Workplace, governs the handling and use of hazardous substances and chemicals in the workplace.

This has harmonised the rules for classifying hazards and uses the same labels and safety data sheets used internationally.

### Heavy machinery

#### 24 | What occupational health and safety rules govern the operation of heavy machinery? What are the practical implications of these rules?

Department Order No. 13 Series of 1998, also known as the Guidelines Governing Occupational Safety and Health in the Construction Industry, regulates the use of heavy equipment in the construction industry.

Before use, heavy equipment must first be tested and certified following the standards prepared by the Department of Labor and Employment (DOLE) or its recognised organisation. Heavy equipment is also subject to routine inspection, and inspection is made by professionals accredited by DOLE.

### General machinery

#### 25 | What occupational health and safety rules govern the operation of general machinery in the workplace?

The Occupational Safety and Health Standards (OSHS) require that all moving parts of prime movers, transmission equipment and all dangerous parts of driven machinery shall be effectively guarded unless so constructed in such a way to prevent any person or object from coming or brought into contact with them. There are required specifications, depending on the material of the guard.

When an employer orders machinery, machine parts or other working equipment, they shall specify in their order that such machinery, parts or equipment shall be provided with all the protective devices required by safety rules. Employers installing new machinery, machine parts or other working equipment shall see to it that these are properly guarded.

### Lock-out and tag-out

#### 26 | What occupational health and safety rules govern how employees are protected while performing service and maintenance on machinery and equipment? Any there any exceptions to these rules?

The occupational safety and health programme established by the employer must provide advice on the planning and organisation of work and on the choice, maintenance and condition of machinery and other equipment.

Philippine occupational health and safety regulations make no specific mention of a lock-out and tag-out procedure.

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## Ergonomic risks and eye strain

### 27 | What rules and measures apply to manage ergonomic risks and eye strain in the workplace?

Employers are required to conduct an annual medical check-up on their workers to identify and manage ergonomic risks experienced in connection with work.

In the maritime industry, shipowners must develop, implement and monitor a programme for the prevention of hazards, including ergonomic-related hazards in the workplace. In the call centre industry, access to medical and welfare services should be readily available, to address the physical, ergonomic and psychological aspects of the work environment as well as the health and safety needs of the workers.

For employees who, by the nature of their work, spend long hours sitting, the employer is required to implement the following measures, among others:

- provide workers with regular five-minute breaks every two hours from sitting time;
- encourage workers to reduce sedentary work by interrupting sitting time and substituting it with standing and walking;
- ensure that the workstation is designed appropriately for the type of work;
- change work systems (eg, providing sit-stand workstations);
- redesign work tasks, if possible, to enable greater variability in movement or posture;
- organise health promotion activities that will allow workers to do more physical activities after work; and
- conduct awareness on the health effects of prolonged sitting and sedentary work.

## Noise and temperature

### 28 | What rules and measures apply to manage risks arising from workers' exposure to noise and temperature extremes?

The OSHS prescribe a table for permissible noise exposure, the duration of permissible exposure depending on the level of the decibel A scale (dBA). However, exposure is allowed for sound levels above 115 dBA.

## Fire risks

### 29 | What rules, restrictions and procedures govern the assessment and management of fire risks in the workplace?

Specific standards in design and construction, occupancy and use of buildings and facilities are prescribed by the Building Code of the Philippines. Fire tests of building materials and fire protection equipment used in any place of employment shall be provided for under the Fire Code of the Philippines. Standards for the design and installation of indoor and outdoor general storage, sprinkler systems and fire protection systems are provided for in the Philippine Society of Mechanical Engineers Code.

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Under the Fire Code of the Philippines, the Bureau of Fire Protection is the government agency in charge of inspecting the workplace to determine its compliance with fire safety regulations. No certificate of occupancy, business permit or permit to operate will be issued unless a fire safety inspection has been conducted on the premises.

### Psychiatric harm from stress, abuse and violence

#### 30 | What rules and measures apply to prevent and address psychiatric harm arising from workplace stress, abuse and violence?

The Mental Health Act addresses mental health in the workplace. Under this law, employers must develop appropriate policies and programmes on mental health in the workplace designed to:

- raise awareness on mental health issues;
- correct the stigma and discrimination associated with mental health conditions; and
- facilitate access for individuals with mental health conditions to treat.

The employer, if found guilty of discriminating against an employee with a mental health condition, may be punished by imprisonment of not less than six months, but not more than two years; or a fine of not less than 10,000 Philippine pesos, but not more than 200,000 Philippine pesos; or both.

DOLE assists employers in the development, formulation and promotion of mental health programmes in the workplace, including helping them access appropriate mental health services.

The Mental Health Act and its implementing rules and regulations provide guidelines for the implementation of mental health workplace policies.

### Special categories of worker

#### 31 | Are there any notable rules or procedures providing additional health and safety protection to special categories of worker?

Under the Occupational Safety and Health Standards for the Call Center Industry, the employer shall make available occupational health and safety facilities required by workers with specific needs, such as pregnant or lactating women, young, older and differently abled workers.

Under RA No. 7277, or the Magna Carta for Disabled Persons, employers are encouraged to provide reasonable accommodation to qualified disabled employees, such as, among others:

- the improvement of existing facilities used by employees to render these readily accessible to and usable by disabled persons; and
- the modification of work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustments or modifications of examinations, training materials or company policies, rules and regulations, provision of auxiliary aids and services and other similar accommodations for disabled persons.

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## Other hazards and risks

### 32 | Are there any notable rules, restrictions or procedures applicable to other occupational hazards and risks in your jurisdiction?

There are no other notable rules aside from those previously mentioned.

## ENFORCEMENT

### Inspections and investigations

### 33 | What rules and procedures govern the enforcement authorities' inspection of workplaces and investigation of employers for health and safety violations?

The Department of Labor and Employment's (DOLE) Department Order No. 183-17, the Revised Rules on the Administration and Enforcement of Labor Laws according to article 128 of the Labor Code and the DOLE Sheriff's Manual on Execution of Judgments all govern the enforcement authorities' inspection of workplaces and investigation of employers for health and safety violations.

### Cooperating with authorities

### 34 | What best practices and practical considerations should employers bear in mind when cooperating with and responding to inspections and investigations by the health and safety authorities?

The Labor Code bestows upon the Secretary of Labor (or their duly authorised representatives) visitor and enforcement powers, allowing them access to employers' records and premises at any time of the day or night, as well as the right to copy from employer records, to question any employee and to investigate any fact, condition or matter that may be necessary to determine violations, or that may aid in the enforcement of labour laws and regulations.

Under the Philippine Labor Code, Republic Act (RA) No. 11058, concerning the Secretary of Labor's power to enforce the mandatory occupational health and safety standards, no person or entity can obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor or the Secretary's duly authorised representatives issued according to the authority granted under article 128 of the Labor Code, and no lower court can issue a temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders.

Thus, employers must cooperate fully with investigations conducted by the Secretary of Labor or any of their authorised representatives. Accordingly, the refusal of access to records or premises by the employer shall result in criminal liability.

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## Penalties and notices

### 35 | What administrative penalties and notices may the authorities impose on employers for health and safety violations? Can these be appealed?

Wilful failure or refusal of an employer to comply with the required Occupational Safety and Health Standards or with a compliance order issued by the Secretary of Labor or by the Secretary's authorised representative, shall make such employer liable for an administrative fine not exceeding 100,000 Philippine pesos per day until the violation is corrected. This is counted from the date the employer or contractor is notified of the violation or the date the compliance order is duly served on the employer.

Administrative penalties can be appealed to the Secretary of Labor if the administrative penalty was imposed by an authorised representative. Failing that, the decision may be appealed to the Court of Appeals.

## Civil liability

### 36 | What is the extent of the employer's civil liability for health and safety violations? Can this liability be limited in any way? What defences apply?

The imposition of the administrative fine is without prejudice to the filing of a civil case with the regular courts. The liability of the employer depends on the extent of the damage or injury to the employee. The employers may raise the defence of actual compliance with occupational health and safety regulations.

## Criminal liability

### 37 | May employers be criminally liable for health and safety violations? What defences apply?

Employers found criminally liable for health and safety violations may face imprisonment of not less than three months or more than three years. Any alien found guilty shall be summarily deported upon completion of the service of sentence. During the trial, employers may raise the defence of actual compliance with occupational health and safety regulations.

Further, the refusal of access to the records or premises by the employer shall result in criminal liability.

## Director and officer liability

### 38 | To what extent may company directors and officers be held liable for health and safety violations?

The employer, project owner, general contractor, contractor or subcontractor, if any, and any person who manages, controls or supervises the work being undertaken, shall be jointly and severally liable for the compliance of occupational health and safety standards laws and regulations.

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## UPDATE AND TRENDS

### Recent developments

- 39** | What have been the most significant recent occupational health and safety developments in your jurisdiction, including any notable court decisions and regulatory actions?

Despite the stabilisation of the covid-19 situation in the country, the Philippine Department of Labor and Employment (DOLE) has issued Labor Advisory No. 18-22, which mandates all covered establishments to comply with the Department of Health advisories on covid-19 prevention, control and reporting protocols. Notably, establishments are required to submit to the DOLE, through their safety officer, a list of covid-19 cases and close contacts.



[Rashel Ann C Pomoy](#)

[rc.pomoy@thefirmva.com](mailto:rc.pomoy@thefirmva.com)

11th Avenue Corner 39th Street, Bonifacio Triangle  
Bonifacio Global City, Metro Manila 1634, Philippines

Tel: +63 8988 6088

[www.thefirmva.com](http://www.thefirmva.com)

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# South Korea

[Jae Ok Kim](#), [Tae Hwan Oh](#), [Kyoung Ho Hong](#), [Chan-Keun Park](#) and

[Seong Hong](#)

[Yoon & Yang LLC](#)

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## LEGAL FRAMEWORK

### Legislation

- 1 | What legislation governs occupational health and safety in your jurisdiction? Are there any notable sector-specific laws or exclusions from the primary legislation?

The underlying statute governing the occupational health and safety sector is the [Occupational Safety and Health Act \(OSHA\)](#). As a matter of principle, OSHA applies to all businesses and workplaces but, in certain cases, OSHA may not wholly or partially be applicable depending on the degree of harm or risk, type of business and the number of full-time employees at a workplace (see article 3 of OSHA and article 2(1) (Attachment 1) of the Enforcement Decree of OSHA).

Further, the [Serious Accidents Punishment Act \(SAPA\)](#) has been in effect on a phase-by-phase basis from 27 January 2022. Pursuant to SAPA, an individual business owner or a responsible executive (referring to a person who is authorised and responsible for representing and supervising the business, or a person equivalent thereto who is in charge of tasks related to safety and health) of a business or an organisation that employs at least five full-time employees is obligated to ensure the safety and health of workers ('duty of ensuring safety and health').

### Regulations

- 2 | How are regulations relating to occupational health and safety generally issued in your jurisdiction? What compliance obligations do these regulations generally impose on employers?

The regulatory provisions outlined in OSHA and SAPA are mandatory, meaning that the provisions are applicable regardless of the parties' intentions to be bound by such provisions.

OSHA imposes on a business owner the obligation to comply with the standards for preventing industrial accidents prescribed by OSHA or any subordinate law; to create a pleasant working environment and improve working conditions; and to provide information on health and safety at the workplace to employees (article5(1)).

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In addition, SAPA imposes on responsible executives the obligation to take measures relating to the formulation and implementation of a safety and health management system to prevent serious industrial accidents; the establishment and implementation of plans to prevent recurrences of accidents (if any); the implementation of matters as ordered for improvement or correction by the central administrative agency or a local government body; and managerial measures necessary for the performance of obligations in accordance with laws and regulations related to safety and health (article 4).

## Applicable employers and workers

### 3 | Which employers and workers are subject to the occupational health and safety regime? Are there any notable exclusions?

OSHA applies to 'persons who provide work' (article 1), mainly employees who are parties to an employment agreement and are subject to the Labour Standards Act (article 2(3)). OSHA also applies, to a limited extent, to workers in special types of employment (persons who do not fall under the definition of an employee under the Labour Standards Act but provide work similar to that of employees (article 77)), delivery workers (article 78) and franchisees (article 79). In addition to business owners who directly hire employees (including government and local autonomous bodies and public institutions (article 3)), OSHA also imposes the duty to ensure health and safety on business owners who entrust others to manufacture objects, undertake construction works, perform repair work, provide services or perform other tasks, irrespective of the name of the contract (article 2 (7)) as well as owners of construction projects (article 2(10)).

SAPA is applicable to employees, namely, (1) workers; (2) a person who provides labour to conduct business in exchange for quid pro quo payment, regardless of contract form; (3) in cases where a business is consummated based on multiple tier subcontracts, including all persons falling under (1) or (2) under a relationship between a contractor and another contractor at each tier.

## Applicable risks

### 4 | Which health and safety risks are covered under the relevant legislation?

Article 38 of OSHA classifies workplace hazards as below:

- hazards arising from physical factors (ie, machinery, apparatus and other equipment, explosive, combustible and inflammable substances, electricity, heat and other energy sources);
- hazards arising from work methods; and
- hazards arising from workplaces.

Article 39 of OSHA provides for health impairments as below:

- health impairments caused by raw materials, gases, vapours, dust, fumes, mist, oxygen deficiency and pathogens, etc;
- health impairments caused by radiation, hazardous rays, high or low temperatures, ultrasonic waves, noise, vibrations and abnormal atmospheric pressure, etc;

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- health impairments caused by gases, liquid or remnants, etc;
- health impairments caused by monitoring gauges, computer terminal operation and precision work, etc;
- health impairments caused by simple repetitive tasks or tasks requiring excessive physical labour; and
- health impairments caused by the failure to maintain adequate standards of ventilation, lighting, illumination, thermal insulation, damp-proofing and cleanliness, etc.

## Authorities

### 5 | What government authorities are charged with the enforcement and administration of the occupational health and safety regime in your jurisdiction? What is the extent of their activities and powers?

The Ministry of Employment and Labour (MOEL) is responsible for the enforcement and administration of OSHA and Chapter 2 (Serious Industrial Accidents) of SAPA. Following MOEL's establishment of guidelines on the interpretation and application of OSHA, the regional employment and labour offices perform specific duties and tasks relating to OSHA and SAPA in compliance with such guidelines. A labour inspector who is assigned to each employment and labour office, pursuant to the Labour Inspector Regulations (Occupational Safety and Health):

- supervises the relevant workplace (section 1 of Chapter 2);
- inspects and examines the relevant workplace (section 2 of Chapter 2); and
- is authorised to investigate industrial accidents and take follow-up measures, namely, conduct an accident investigation and take follow-up measures such as ordering the suspension of work operations pursuant to such investigation (Chapter 3), and may also investigate cases pertaining to the violation of OSHA as a special judicial police officer.

## Soft law and guidance

### 6 | Has the government issued any guidance or codes of practice relating to occupational health and safety in your jurisdiction? What force do these have and how are they implemented in practice?

Article 13 of OSHA authorises the government to establish standards for technology and working environment, and to provide guidance and recommendation concerning:

- measures to prevent industrial accidents relating to the placement of orders, design, manufacturing, import or construction; and
- health and safety measures taken by business owners. In this regard, several guidelines have been enacted including the Regulations on Occupational Health and Safety Standards.

Although such guidelines are not statutes, they still serve as criteria for determining whether a business owner has fulfilled their duty to maintain occupational health and safety in practice when an industrial accident occurs.

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## EMPLOYER DUTIES AND RESPONSIBILITIES

### Primary duty

- 7** | What is the nature and extent of the employer's primary duty to protect workers' health and safety under the relevant legislation? How is this duty observed and interpreted in practice?

The Occupational Safety and Health Act (OSHA) imposes on a business owner the obligation to establish standards for the prevention of industrial accidents, create pleasant working environments and improve working conditions to alleviate physical fatigue and emotional stress of employees and furnish information on workplace health and safety to employees. The provisions outlined in OSHA and other subordinate laws specifically obligate business owners to take specific measures to ensure the safety and health of employees within a workplace. If a business owner fails to comply with such obligations under OSHA, the business owner will be subject to penalties or criminal sanctions.

Meanwhile, the Serious Accidents Punishment Act (SAPA) imposes on a responsible executive the duty to ensure safety and health, which focuses on the 'management' of safety and health relating to the entire business or workplace. Given that the foregoing Act has just recently been enacted, precedents have yet to be established as to the interpretation and application of the duty to ensure safety and health.

### Third parties

- 8** | Does the employer owe a duty to protect the health and safety of third parties? If so, what is the nature and extent of this duty?

Under OSHA, business owners assume the duty to establish health and safety measures for workers that they have hired: provided if a worker hired by the relevant contractor works at the contractee (employer)'s workplace, such employer is obliged to take necessary health and safety measures to prevent industrial accidents involving both its employees and the employees of the relevant contractor (article 63).

Meanwhile, SAPA provides for the obligation of responsible executives, such as:

- the duty to ensure the safety and health of 'employees' in the business or workplace that they control, operate and manage (article 4); and
- even in cases of subcontracting, outsourcing, consigning, etc, to a third party, where responsible for the actual control, operation and management of the relevant facilities, equipment and place, etc, the duty to ensure the safety and health of 'employees of a third party' (proviso to article 5).

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## Work premises

### 9 | What is the nature and extent of the employer's duty to ensure safe work premises?

OSHA mandates business owners to take measures to prevent accidents involving employees, and such obligation is not confined to a workplace or place of business directly controlled by a business owner. The Supreme Court of Korea recently held that, if an employee hired by a business owner provides work at a third party's workplace, the business owner's duty to prevent accidents is not negated, solely on the basis that such a workplace is not directly managed and controlled by the business owner (see Supreme Court Decision 2016Do14559 of 29 April 2020).

As SAPA likewise imposes on an individual business owner or a responsible executive the duty to ensure the safety and health of a business or workplace that the individual 'actually controls, operates, and manages', the applicable scope is not necessarily confined to a place that a business owner directly controls.

## Plant and equipment

### 10 | What are the employer's duties and responsibilities regarding the provision of safe plant and equipment?

OSHA mandates business owners to ensure necessary protective measures and health and safety measures to prevent accidents and injuries relating to hazardous or dangerous machinery and equipment (article 80). OSHA prohibits the use of any hazardous or dangerous machinery that may endanger the health and safety of employees unless a safety certification has been obtained (article 84). Also, concerning any hazardous or dangerous machinery that is required to undergo safety inspections, such inspections are required to be carried out at regular time intervals, and machinery that has neither undergone nor passed such safety inspections cannot be used (article 93).

## Work systems, training and supervision

### 11 | What are the employer's duties and responsibilities regarding the provision of safe work systems and adequate training and supervision?

OSHA requires that a business owner must have a safety and health management officer, a management supervisor, a safety manager, a health manager, a safety and health management director, etc, in consideration of the type or scale of business, and must establish an occupational health and safety committee within the workplace to deliberate on and resolve key matters related to safety and health within the workplace (section 1 of Chapter 2). Also, for the purpose of maintaining safety and health, a business owner is obligated to prepare a health and safety management regulation to be made available to employees.

OSHA requires that a business owner provide regular health and safety education or training to employees, health and safety education or training upon recruitment of employees and changes in work duties, as well as health and safety education or training upon recruitment

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of employees to perform dangerous or hazardous tasks or planned changes in such work duties.

A business owner is obliged to provide safety and health education related to the duties of a health and safety management officer, a management supervisor, a safety manager, a health manager and a health and safety management director, etc [article 32].

Meanwhile, the duty to ensure safety and health under SAPA involves:

- granting authority and allocating the budget necessary for a safety and health management officer, a management supervisor and a chief safety and health management officer to faithfully perform their duties and to assess and establish a criteria for assessment at least once on a semi-annual basis to assess and manage whether the relevant duties are being faithfully performed;
- assigning a safety manager, a health manager, a safety and health management director and an industrial physician according to the standard as set forth in SAPA; and
- monitoring at least once on a semi-annual basis whether safety and health education on hazardous and dangerous works are being provided and taking necessary measures.

## Accident response and reporting

### 12 | What rules and requirements govern employers' response to and reporting of workplace accidents?

Under OSHA, if an industrial accident occurs, a business owner is obligated to preserve documents on the cause of the accident and report the cause of the accident, period of reporting and preventive action plan to the Minister of Employment and Labor (article 57). Further, in the case of serious accidents (ie, one or more death, injuries suffered by two or more people from the same incident that require medical treatment for three months or longer or 10 or more people suffering from an injury or illness resulting from the same cause), a business owner must take necessary health and safety measures involving the immediate cessation of relevant work operations and the evacuation of employees. The occurrence of a serious accident must be promptly reported to the competent employment and labour office (article 54).

Meanwhile, SAPA provides for the establishment of a manual based on the duty to ensure safety and health in preparation for any occurrence of serious industrial accidents or other urgent risks that may lead to such occurrences, and to conduct inspections at least once on a semi-annual basis to determine whether measures are being taken according to the relevant manual.

## Risk assessments

### 13 | What rules, requirements, procedures and best practices should employers be aware of when conducting occupational risk and hazard assessments?

OSHA imposes on business owners the obligation to conduct a workplace risk assessment pursuant to the Guidelines on Workplace Risk Assessment by the Ministry of Employment and Labour (article 36). A workplace risk assessment is defined as a series of processes

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involving the identification of hazardous and risk factors, the presumption and decision of the probable occurrence (frequency) and the severity (degree) of an injury or an illness caused by the relevant hazardous or risk factor, as well as the development and implementation of measures to mitigate (reduce) such factors. When conducting a risk assessment, business owners are required to engage the employees of the relevant workplace and to document and preserve the assessment results and follow-up measures (article 36(2) and (3) of OSHA).

Meanwhile, SAPA imposes on responsible executives the obligation to establish a work procedure based on the duty to ensure safety and health: to identify and improve hazardous and risk factors and to take necessary measures, including monitoring at least once on a semi-annual basis, to determine whether hazardous and risk factors can be identified and improved. However, the establishment of a work procedure and monitoring at least once on a semi-annual basis may be substituted with the risk assessment referred to in the foregoing paragraph.

### Disclosure and reporting requirements

#### 14 | Are employers required to submit regular health and safety reports to the relevant authorities? If so, what is the nature and extent of this requirement?

OSHA does not mandate employers to periodically submit health and safety reports.

However, the Minister of Employment and Labour may order a business owner of a workplace, which is recognised as in need of comprehensive improvement measures to prevent industrial accidents, to develop and implement a comprehensive plan to better ensure the health and safety of the workplace and facilities, etc. The business owner subjected to such an order must prepare a health and safety plan and submit such plan to the Minister of Employment and Labour. Such health and safety plan shall include details on facilities, health and safety management system, health and safety education and any other necessary matters for the prevention of industrial accidents and improvement of working environments.

### Provision of information to workers

#### 15 | What requirements apply regarding the provision of health and safety information to workers?

In accordance with OSHA, a business owner has broad obligations to provide health and safety information to employees such as:

- the duty to furnish the essential points of OSHA and subordinate laws and the Health and Safety Management Regulations to employees;
- the duty to install and affix health and safety signs;
- the duty to indicate safety certification obtained regarding the relevant dangerous or hazardous machinery that may endanger the health and safety of employees;
- the duty to affix the issued safety inspection certificate on the relevant machinery;
- the duty to make available the material safety data sheets (MSDS) – which detail the product name, name and content of chemical substances and precautions when

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- handling chemical products or substances, and indicate the hazardous and physical hazards, physical and chemical features, etc – relating to specific chemical substances or its mixtures covered by the MSDS and provide education or training on the above; and
- the duty to mark warnings on containers of materials covered by the MSDS.

Business owners will be subject to a fine in the case of a breach of these obligations.

### Insurance requirements

#### 16 | What insurance must employers carry to cover liability for occupational health and safety risks?

OSHA mandates a business owner to subscribe to an industrial accident compensation insurance against risks involving occupational health and safety.

### Other duties and responsibilities

#### 17 | Are employers subject to any other notable health and safety duties and responsibilities in your jurisdiction?

Under OSHA, a business owner, particularly in the construction business, is required to establish measures to prevent industrial accidents. The principal obligations of those engaged in the construction business are as follows:

- owners of construction projects must prepare a basic health and safety ledger (during the planning stage of construction works);
- the duty to furnish such ledger to a designer and ensure that the designer prepares and complies with the design health and safety ledger (during the design stage of construction works); and
- the duty to furnish the design health and safety ledger to the contractor who is awarded the contract for construction works and ensure that the contractor prepares and complies with the construction health and safety ledger (during the construction stage of the works).

Meanwhile, the owner of the construction project and the contractor who is awarded the contract for construction works may neither shorten the construction period nor change the fixed construction method without any justifiable grounds. If the contractor requests an extension of the construction period due to a delay in construction works caused by a natural disaster or similar, such period must be extended unless other special circumstances exist.

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## WORKER DUTIES, RIGHTS AND RESPONSIBILITIES

### Primary duty

**18** What is the nature and extent of a worker's duty to protect their own and others' health and safety under the relevant legislation and regulatory framework?

Article 6 of the Occupational Safety and Health Act (OSHA) prescribes that:

*'Employees must comply with the standards for preventing industrial accidents prescribed by this Act or any order issued under this Act as well as the measures for preventing industrial accidents taken by relevant persons, including business owners, the Korea Occupational Safety and Health Agency, and labour inspectors under article 101 of the Labour Standards Act'.*

In short, employees are entitled to protection and are subject to obligations under OSHA. The duties of employees, as outlined in OSHA, can be largely classified into:

- the duty to independently comply with standards as prescribed by relevant laws; and
- the duty to cooperate with various industrial accident prevention measures taken by business owners, etc.

### Consultation and collaboration with employers

**19** Are workers in your jurisdiction entitled or required to consult and collaborate with their employer in relation to the development and implementation of health and safety measures and policies?

Employees are required to comply with the industrial accident preventive measures taken by their business owners under article 5 of OSHA. In short, employees must comply with health and safety management regulations that their business owner has established according to article 25(1) of OSHA (see article 27 of OSHA), undergo health examinations provided by the business owner (see article 133 of OSHA) and wear protective gear such as safety helmets provided by the business owner when performing dangerous work (see article 2 of the Enforcement Rule of OSHA).

Article 2(6) of OSHA defines an 'employee representative' as a person who represents a labour union composed of the majority of employees, if any, or who represents a majority of employees in the absence of a labour union composed of the majority of employees and prescribes the role of such employee representatives. The term 'employee representative' is also used in the Labour Standards Act but the Act is silent as to the appointment or election of such representative. In line with the Ministry of Employment and Labour's interpretation, the appointment or election of an employee representative does not necessarily have to go through a direct vote but an employer's intervention must be precluded during the candidate nomination process and employees must be granted free will to express their opinions. The employee representative may request participation in the business owner's health and safety assessment process if it seems that the business owner is not fully cooperating in the health and safety assessment (see article 47(3) of OSHA), request participation in the

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monitoring of the working environment of a workplace or a briefing session on the outcome of such monitoring (article 125(4) and (7) of OSHA) and request presence or attendance in health exams carried out on employees by the business owner (article 132(1) of OSHA). In full consideration of the above, it can be inferred that the employee representative serves as a supervisor in determining whether the business owner is fully performing its obligations under OSHA.

## Trade unions

### 20 | What role do trade unions play in protecting occupational health and safety in your jurisdiction?

A labour union referred to in OSHA neither has a direct right nor obligation based on OSHA but may engage in activities for the maintenance and improvement of working conditions related to occupational health and safety under the Trade Union and Labour Relations Adjustment Act. In short, a labour union generally represents its members and negotiates with the management (company) pertaining to requests from union members on the improvement of working conditions and industrial safety, and reflects the results in the collective agreement. In the event of the occurrence of an industrial accident, the relevant accident is either reported or a petition is filed with the competent employment and labour office to ensure that an investigation regarding such accident is commenced.

## Whistle-blowing

### 21 | Are workers afforded any legal protections against reprisals for whistle-blowing in relation to occupational health and safety risks?

Under article 157(1) of OSHA, an employee may report instances of a violation of OSHA or any order issued thereunder at a workplace to the Minister of Employment and Labour or a labour inspector. Article 157(3) prohibits a business owner from dismissing or unfavourably treating such an employee because they filed such a report. If an employee determines that they have been subjected to unfavourable treatment by their employer on the grounds of having duly reported a violation as outlined in article 157(1) of OSHA, the validity of such treatment may be disputed through proceedings at the National Labour Relations Commission or the court.

## Right to refuse work

### 22 | Do workers have the right to refuse work or seek reassignment in hazardous situations?

If an imminent danger of industrial accidents exists as outlined in article 52(1) of OSHA, employees may suspend their work operations and evacuate their workplaces; provided, however, that such employees who ceased work operations and evacuated shall report such fact to a labour inspector or similar authority under article 52(2) of OSHA. The right to directly request work reassignment is not explicitly provided for under the law.

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## HAZARDS AND RISKS

### Hazardous substances and chemicals

**23** | What occupational health and safety rules govern the handling and use of hazardous substances and chemicals? What are the practical implications of these rules?

Matters on handling and use of hazardous and chemical substances are provided for in relevant occupational health and safety laws and regulations, as follows:

- the Occupational Safety and Health Act (OSHA);
- the Regulations on Occupational Health and Safety Standards;
- the Chemical Substances Control Act;
- the Act on Registration and Evaluation of Chemicals;
- the Act on the Safety Control of Hazardous Substances;
- the High-Pressure Gas Safety Control Act;
- the Safety Control and Business of Liquefied Petroleum Gas Act;
- the Nuclear Safety Act;
- the Industrial Standardisation Act;
- the Framework Act on Firefighting Service;
- the Firefighting System Installation Business Act;
- the Act on Fire Prevention and Installation, Maintenance and Safety Control of Firefighting Systems;
- the Building Act; and
- the Regulation on Restriction of Employment in Hazardous and Dangerous Occupations.

The aforementioned laws and regulations define and classify hazardous and chemical substances, as well as regulating matters on storage facilities, preparing and furnishing material safety data sheets, assessing eligibility for handling substances and notifying employees of hazardous and risk factors.

### Heavy machinery

**24** | What occupational health and safety rules govern the operation of heavy machinery? What are the practical implications of these rules?

Matters on the operation of heavy equipment are provided for in relevant occupational health and safety laws and regulations, as follows:

- OSHA;
- the Regulations on Occupational Health and Safety Standards;
- the Industrial Standardisation Act;
- the Framework Act on National Standards;
- the Framework Act on the Construction Industry;
- the Construction Machinery Management Act;
- the Motor Vehicle Management Act; and
- the Regulation on Restriction of Employment in Hazardous and Dangerous Occupations.

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The relevant laws and regulations pertain to guidelines on the performance, function and certification of heavy equipment, and the eligibility and capacity of the relevant equipment operator. Penal provisions are presumed upon the breach of any provisions under such laws and regulations, ensuring the practical effectiveness of such laws and regulations.

## General machinery

### 25 | What occupational health and safety rules govern the operation of general machinery in the workplace?

Matters on the operation of general equipment are provided for in relevant occupational health and safety laws and regulations, as follows:

- OSHA;
- the Regulations on Occupational Health and Safety Standards;
- the Industrial Standardisation Act;
- the Framework Act on Industrial Standardisation; and
- the Electrical Appliances and Consumer Products Safety Control Act.

The foregoing laws and regulations pertain to the performance criteria and safety inspection criteria based on the Korean Industrial Standards, as well as restrictions on the use of sub-standard equipment. The protective equipment requirements are generally satisfied by obtaining certification (or through using such certified equipment) as outlined in relevant laws including the Industrial Standardisation Act.

## Lock-out and tag-out

### 26 | What occupational health and safety rules govern how employees are protected while performing service and maintenance on machinery and equipment? Any there any exceptions to these rules?

OSHA and articles 92, 111, 129, 224 and 415 of the Regulations on Occupational Health and Safety Standards provide for matters on:

- the maintenance of facilities and equipment;
- the cutting off of power and machinery electricity during the maintenance process;
- the release of compressed gas, liquid or heat energy from machinery;
- the installation and management of lock devices and locks for industrial use;
- the prevention of malfunctions; and
- protective devices.

Exceptional clauses under such relevant laws and regulations include 'where concerns of endangering employees are non-existent in light of the structural feature of machinery', 'where safety and protective gears are used', 'where protective measures are taken in hazardous areas' and 'where measures exist to prevent unforeseeable robotic operations or malfunctions'.

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## Ergonomic risks and eye strain

### 27 | What rules and measures apply to manage ergonomic risks and eye strain in the workplace?

Article 39 of OSHA and articles 656 to 666 of the Regulations on Occupational Health and Safety Standards provide for relevant measures as to ergonomic risks within the workplace, namely:

- periodic surveys of hazardous factors;
- the improvement of the working environment;
- the notification of hazards to employees;
- the implementation of prevention and management programmes; and
- the weight restriction of heavy items.

Measures on managing eye fatigue among employees operating computer devices are provided for in article 39 of OSHA and article 667 of the Regulations on Occupational Health and Safety Standards, as follows:

- restrictions on indoor light and shade differences;
- restrictions on the inflow of sunlight;
- restrictions on the use of low-luminance lighting and indoor window and wall reflection;
- desk and chair height adjustment for computer and keyboard use; and
- employee rest-hour provision.

## Noise and temperature

### 28 | What rules and measures apply to manage risks arising from workers' exposure to noise and temperature extremes?

Article 39 of OSHA and articles 512 to 517 of the Regulations on Occupational Health and Safety Standards provide for measures on managing risks caused by noise exposure, namely:

- measures to reduce noise;
- the notification of permitted noise levels to employees;
- hearing loss countermeasures;
- hearing aid provision; and
- the operation of hearing assistance programmes.

Concerning risks involving exposure to extreme temperature, relevant measures are in place under article 38 of OSHA and articles 32, 48, 82, 254, 310 and 558 to 572 of the Regulations on Occupational Health and Safety Standards, namely:

- the provision of heat-proof, cold-proof, fire-resistant or thermal clothing;
- the establishment of fences;
- the provision of first-aid kits;
- the prevention of fires and explosions caused by sparks or combustible materials;
- the installation of temperature and humidity control devices, ventilation systems and moisture control devices;

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- the establishment of rest facilities;
- ensuring that new employees can adapt to high-temperature environments;
- the provision of thermometers;
- guidance on physical exercise and nutrition in preparation for cold weather;
- the storage of warm water to maintain body temperature;
- the provision of dry clothes for wet clothes; and
- the provision of salt and beverages.

## Fire risks

### 29 | What rules, restrictions and procedures govern the assessment and management of fire risks in the workplace?

Restrictive measures and procedures related to the assessment and management of fire hazards in the workplace are prescribed under:

- the Framework Act on Firefighting Services;
- the Firefighting System Installation Business Act;
- the Act on Fire Prevention and Installation, Maintenance and Safety Control of Firefighting Systems;
- the Building Act;
- OSHA; and
- the Regulations on Occupational Health and Safety Standards.

In particular, articles 225 to 327 of the Regulations on Occupational Health and Safety Standards provide for the management of fire hazards caused by dangerous goods, explosives or electricity in high-risk industries.

## Psychiatric harm from stress, abuse and violence

### 30 | What rules and measures apply to prevent and address psychiatric harm arising from workplace stress, abuse and violence?

Measures related to addressing stress in the workplace are provided for in articles 5 and 41 of OSHA and articles 79 and 669 of the Regulations on Occupational Health and Safety Standards, namely:

- measures to prevent and resolve emotional distress of customer-service employees;
- the establishment of rest facilities; and
- measures for employees in highly stressful working environments (ie, long-term work hours, late-night or shift work, vehicle drivers and precise machinery operators, etc).

Further measures include:

- the assessment of stress factors;
- the gathering of feedback from employees;
- the improvement of working conditions;
- the provision of welfare benefits;
- notification to employees regarding stress factors;

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- the assessment of risks involving cerebral vascular disease and cardiovascular disease; and
- the operation of relevant health promotion programmes.

Concerning workplace harassment and violence, articles 8 and 76-3 of the Labour Standards Act and article 14(6) of the Equal Employment Opportunity and Work-Family Balance Assistance Act provide relevant measures, namely:

- surveys of workplace harassment and violence;
- protective measures against victims;
- disciplinary action against perpetrators;
- the prohibition of unfavourable treatment against victims or complainants; and
- the implementation of education or training on sexual harassment prevention in the workplace.

### Special categories of worker

#### 31 | Are there any notable rules or procedures providing additional health and safety protection to special categories of worker?

Relevant measures and policies to ensure the health and safety of special categories workers are provided for in:

- the Labour Standards Act;
- the Equal Employment Opportunity and Work-Family Balance Assistance Act;
- the Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion;
- the Act on the Guarantee of Convenience Promotion of Persons with Disabilities, Senior Citizens, Pregnant Women and Nursing Mothers; and
- the Act on the Employment, etc of Foreign Workers.

There are also further policies and procedures in place related to:

- protective measures;
- ensuring paid leave;
- limiting the degree of work;
- prohibiting discrimination;
- the establishment of convenient facilities; and
- granting access to employees.

### Other hazards and risks

#### 32 | Are there any notable rules, restrictions or procedures applicable to other occupational hazards and risks in your jurisdiction?

Relevant laws and regulations include:

- the Labour Standards Act;
- the Industrial Accident Compensation Insurance Act;

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- the Act on the Collection of Insurance Premiums, etc for Employment Insurance and Industrial Accident Compensation Insurance;
- OSHA; and
- the Regulations on Occupational Health and Safety Standards, which specify the details and procedures relating to disability levels and compensation tables, relevant insurance policies, treatment of injured parties and payment of wages, etc to injured parties.

## ENFORCEMENT

### Inspections and investigations

#### 33 | What rules and procedures govern the enforcement authorities' inspection of workplaces and investigation of employers for health and safety violations?

The Occupational Safety and Health Act (OSHA) provides for conducting investigations into a business owner's breach of the duty to take health and safety measures. Moreover, article 155 prescribes the authority granted to labour inspectors who enforce OSHA and its relevant procedures.

### Cooperating with authorities

#### 34 | What best practices and practical considerations should employers bear in mind when cooperating with and responding to inspections and investigations by the health and safety authorities?

If necessary, under OSHA, a labour inspector:

- may visit a workplace to question the business owner, employees or health and safety manager, inspect account books, documents and other items, conduct safety inspections and request submission of relevant documents (article 155(1));
- may inspect machinery, equipment, etc and collect products, raw materials or devices gratuitously to the extent required for inspection (article 155(2)); and
- may order any relevant person, such as the business owner, employees or health and safety manager to submit a report or to make an appearance to state their opinion (article 155(3)).

Administrative fines may be levied in cases where:

- the inspection, examination and collection of a labour inspector as above is refused, hindered or avoided;
- reports are not submitted or appearances are not made or false reports are made in violation of the relevant order; and
- the response to questions from a labour inspector is refused, hindered, avoided or falsely given.

Accordingly, business owners are prohibited from such acts as refusing, hindering, avoiding or falsely responding to a competent authority's investigation or order.

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## Penalties and notices

### 35 | What administrative penalties and notices may the authorities impose on employers for health and safety violations? Can these be appealed?

Penal provisions under OSHA include imprisonment or criminal fines (ie, imprisonment of no less than seven years or a fine of up to 100 million South Korean won), not to mention administrative fines (ie, fine of up to 50 million South Korean won).

Criminal punishment (imprisonment or criminal fines) can be appealed under the Criminal Procedure Act. Even in the case of an administrative fine, such a fine can be contested to the competent administrative office under the Act on the Regulation of Violations of Public Order or a court judgment.

## Civil liability

### 36 | What is the extent of the employer's civil liability for health and safety violations? Can this liability be limited in any way? What defences apply?

If a business owner has breached the duty to take health and safety measures as outlined in relevant laws including OSHA, such business owner assumes tort liability against the injured employee or their family (if said employee dies). Meanwhile, in the event that a serious industrial accident occurs due to an individual business owner or a chief executive officer's intentional or negligent breach of the duty to ensure safety and health, the Serious Accidents Punishment Act (SAPA) imposes that such business owner, entity or institution assume liability for compensation within the scope not exceeding five times the amount of damage (article 15(1)). In such case, the following elements are to be taken into consideration with respect to determining the compensation amount: the extent of intentional or negligence; the type and substance of the obligatory breach; the scale of damage from such breach of obligation; the economic gains reaped by a business owner, entity or institution from such breach of obligation; the period and number of times of the obligatory breach; and the degree of efforts by a business owner, entity or institution to provide relief and prevent recurrence (article 15(2)).

Concerning the violation of OSHA, exemption from civil liability is possible only when the business owner can prove that there was no illegality (intentional or negligent act), and the business owner's liability may be mitigated if concurrent negligence exists on the part of the injured employee depending on the type of accident.

## Criminal liability

### 37 | May employers be criminally liable for health and safety violations? What defences apply?

Under OSHA and other relevant health and safety laws and regulations, a business owner is obliged to ensure that employees are not in harm's way during the performance of work duties. Therefore, if employees are injured and harmed in an accident, the business owner may be held criminally liable if found to have violated OSHA and other relevant laws and regulations.

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In such a case, the business owner must prove that they faithfully performed the obligations under OSHA and that the cause of the industrial accident was not attributable to negligence on the part of the business owner. The business owner may be exempt from punishment for violating OSHA if able to prove that the relevant accident was caused by the injured employee's breach of safety protocol.

### Director and officer liability

#### **38** | To what extent may company directors and officers be held liable for health and safety violations?

In principle, it is the person who bears obligations under the law that is penalised for a violation of such obligations. Thus, the responsible party (generally, the health and safety manager) who breached the duty of taking health and safety measures at the accident site is held criminally liable. Yet, given that business owners (or the company as a legal entity or the representative director in the case of one-man businesses) are mostly required to perform the compulsory provisions under OSHA, OSHA also has a penal provision (ie, article 173) that may also punish a representative (director or officer) of the company or business owner to ensure the legal effectiveness of OSHA.

Provided, however, that exemption from such liability is feasible if a representative (including a director or officer) of the company or business owner can prove that the duty of due care and supervision was faithfully performed as to the relevant work to prevent any violations of OSHA.

Meanwhile, in accordance with SAPA, which has been in effect on a phase-by-phase basis since 27 January 2022, responsible executives are mandated to comply with the duty to ensure safety and health and, in the event that serious industrial accidents occur arising from the breach of such duty, chief executive officers are subject to the following:

- imprisonment of not more than one year or a fine not exceeding 1 billion won as to the consequence of death; and
- imprisonment of not more than seven years and a fine not exceeding 100 million won as to the consequence of injury and illness.

If a responsible executive or business owner is sentenced to punishment for committing an offence or recommits an offence within five years from the date that their sentence (for the initial offence) was finalised, they may be subject to an additional aggravated punishment of up to 50 per cent of the corresponding punishment described above (article 6).

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**UPDATE AND TRENDS****Recent developments**

**39** | What have been the most significant recent occupational health and safety developments in your jurisdiction, including any notable court decisions and regulatory actions?

Over a year has passed since the Serious Accidents Punishment Act (SAPA) was enforced, and the Korean courts have rendered their first rulings on cases in which prosecutors pursued charges for violations. As of 17 May 2023, a total of two cases have led to court rulings following an indictment by the prosecution in relation to a violation of SAPA. In one of these cases, the representative director was sentenced to imprisonment.

Meanwhile, given that only a few lower court (first-instance) rulings have been rendered so far, further observation of additional rulings is required to be able to comprehend the trend of the Korean courts regarding the interpretation and application of SAPA.

**YOON & YANG**

법무법인(유) 화우

[Jae Ok Kim](#)

kimjo@yoonyang.com

[Tae Hwan Oh](#)

thoh@yoonyang.com

[Kyoung Ho Hong](#)

khhong@yoonyang.com

[Chan-Keun Park](#)

ckpark@yoonyang.com

[Seong Hong](#)

shong@yoonyang.com

6th 17th 18th 19th 22nd 23rd 34th Floors ASEM Tower,  
517 Yeongdong-daero, Gangnam-Gu, Seoul 06164, South Korea  
Tel: +82 2 6003 7000  
[www.yoonyang.com](http://www.yoonyang.com)

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# Thailand

[Shohei Sasaki](#), [Yothin Intaraprasong](#), [Nopparak Yangiam](#) and

[Ponpun Krataykhwan](#)

[Nagashima Ohno & Tsunematsu](#)

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## LEGAL FRAMEWORK

### Legislation

- 1 | What legislation governs occupational health and safety in your jurisdiction? Are there any notable sector-specific laws or exclusions from the primary legislation?

[The Occupational Safety, Health and Environment Act of 2011 \(OSHA\)](#) is the main legislation that governs and designates standards of protective measures for controlling, monitoring and managing occupational safety, health and the environment in workplaces. In principle, OSHA applies to all employers in the private sector and shall not apply to any government agencies.

### Regulations

- 2 | How are regulations relating to occupational health and safety generally issued in your jurisdiction? What compliance obligations do these regulations generally impose on employers?

Before the enactment of OSHA, the number of workers who suffered from an injury, disability, loss of life or occupational disease had increased and become more severe. Despite this, the general law concerning labour protection matters (ie, [the Labour Protection Act of 1998 \(the Labour Protection Act\)](#)), does not cover mechanisms and measures for the management of working safely and effectively. Therefore, OSHA was legislated and has been effective since 16 July 2011. OSHA aims to regulate the protective measures to control, supervise and manage occupational safety, health and the work environment so that Thailand can protect and preserve its human resources, which are deemed the important resources of the country.

As for compliance with the law, OSHA provides the framework regarding occupational health and safety, while the details on their implementation are further designated under the Ministerial Regulations issued by the Minister of Labour. These Ministerial Regulations stipulate additional details of standards for management and safety measures in workplaces as well as specific measures for certain types of works that are more likely to expose employees to risks.

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Employers are obliged to comply with OSHA as well as the Ministerial Regulations and notifications issued by the said law depending on their size of business, characteristics of work and other factors. Their main duties are to manage and maintain the workplace and its environment to ensure safe and hygienic conditions.

### Applicable employers and workers

#### 3 | Which employers and workers are subject to the occupational health and safety regime? Are there any notable exclusions?

An 'employer' under the definition in OSHA means:

- any employer under the definition in the Labour Protection Act (ie, a person who agrees to accept an employee for work by paying a wage), and shall include any authorised person who can act on behalf of an employer who is a legal person; or
- any business entrepreneur who allows any person to work for or to provide benefit for or in an establishment, whether the working or providing some benefit in part or as a whole or a part of the production process or business under the responsibility of the entrepreneur.

On the other hand, an 'employee' shall mean:

- an employee (or any other roles in the same manner) under the definition in the Labour Protection Act (ie, a person who agrees to work for an employer in return for wages); or
- a person who is allowed to work or to provide benefit for or in an establishment of an employer.

The scope of an employer and employee under OSHA is not limited to persons who are bound by a traditional employment relationship under the employment contract, but also includes any persons allowed to work or provide benefits inside the same business establishment (eg, independent contractors, employees of any third-party vendor and other off-site workers).

Nevertheless, any government agencies, including employees in such agencies (except the state enterprises), shall not be subject to OSHA and hence are not deemed employers and employees under this law.

### Applicable risks

#### 4 | Which health and safety risks are covered under the relevant legislation?

Compensation of damage caused by an 'occupational accident' or 'occupational disease' is stipulated in the [Workmen's Compensation Act of 1994 \(the Workmen's Compensation Act\)](#).

Under the Workmen's Compensation Act, employees who suffer from injury or sickness from work will be eligible for a subsidy for medical fees and wages during absence from work by funding from the compensation fund established under the same law. In this regard, the Workmen's Compensation Act defines 'suffering from danger' as 'when an employee is physically harmed or psychologically affected or dies as a result of work or

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the protection of employer's interest or by the employer's order', while 'sickness' must be an illness that is incidental to the nature of or the condition of work, or the work itself. The types of sickness that are considered incidental to the nature of work are designated under the Ministerial Notification issued under the Workmen's Compensation Act. Until now, a number of illnesses caused by common risks in industrial works have been designated as 'illness incidental to the nature of or the condition of work', for example:

- illness during works caused by chemicals such as mercury, cadmium or lead, etc;
- illness during works caused by physical force such as hearing impairment caused by noise, diseases caused by compressed or decompressed air or vibration, etc; and
- respiratory illness during works caused by recognised sensitising agents or irritants inherent to the work process, etc.

Illnesses that are designated in the Ministerial Notification will be automatically assumed as occupational sickness unless proven otherwise. On the other hand, danger or illness that is not caused by direct orders, or does not have a special designation under the law, requires proof of causation between such injury or illness and works. In other words, employees who will be eligible for compensation under the Workmen's Compensation Act or seek indemnification from employers must prove whether their injury or illness happened 'in the course of employment'. In this regard, the criteria to determine the course of employment will be determined by courts on a case-by-case basis. Based on precedence cases, there are various factors that Thai courts will take into consideration, for example, whether such injury or illness happened during business hours and whether the danger is caused by work-related or private activities or caused by direct orders from employers or by any action that is done for the benefit of employers.

## Authorities

### 5 | What government authorities are charged with the enforcement and administration of the occupational health and safety regime in your jurisdiction? What is the extent of their activities and powers?

The government authorities that are mainly charged with the enforcement and administration of the occupational health and safety regime in Thailand are as follows:

- the Department of Labour Protection and Welfare under the Ministry of Labour (DLPW) is the main government organisation that is charged with the enforcement of OSHA and is authorised to impose punishment or order business establishments to rectify the violation of OSHA. The DLPW also oversees the development of safety systems, inspection criteria and the evaluation of occupational safety; and
- the Thailand Institute of Occupational Safety and Health (TOSH) is an independent public organisation established under OSHA. The main responsibility of TOSH is to develop and support the publication of measures to maintain occupational safety, health and environment in workplaces, and also to liaise with the private sector on the implementation of OSHA. Unlike the DLPW, TOSH has no authority to impose penalties or perform an investigation in the case of violation of the laws.

Both authorities have their headquarters in Bangkok, with branches in major provinces across Thailand. The branch offices are under the direct authorisation of their headquarters

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and shall adhere to the policy and instruction from their headquarters with no autonomy of their own.

### Soft law and guidance

- 6** | Has the government issued any guidance or codes of practice relating to occupational health and safety in your jurisdiction? What force do these have and how are they implemented in practice?

State authorities responsible for the regulation of occupational safety, health and environment have issued numerous guidelines and manuals for employers and related parties to apply to their businesses to ensure that employers comply with OSHA. Examples of such guidelines and manuals include safety manuals for construction sites, the evaluation of working environments issued by DLPW and standards to promote occupational safety, health and the environment issued by TOSH.

Although the guidelines and manuals mentioned earlier are not compulsory under the laws, and non-compliance will not directly trigger any legal penalties against employers, still, employers can reduce the risk of violating related laws by observing such guidelines and manuals. Therefore, in practice, many business establishments in Thailand, especially establishments that participate in the occupational safety and health management system standard programme organised by TOSH, tend to comply with these guidelines and manuals as they are directly issued by the relevant authorities who are responsible for OSHA enforcement.

## EMPLOYER DUTIES AND RESPONSIBILITIES

### Primary duty

- 7** | What is the nature and extent of the employer's primary duty to protect workers' health and safety under the relevant legislation? How is this duty observed and interpreted in practice?

Under the Occupational Safety, Health and Environment Act of 2011 (OSHA), the employer has the duty to provide and maintain the establishment, with the employees to enjoy safe and hygienic working conditions and environment, as well as to support and promote safety measures to prevent any harm against employees' lives, bodies, mentality and health.

In addition to the primary duty under OSHA, various Ministerial Regulations also stipulate standards for the administration, management and implementation of occupational safety, health and environment in workplaces in specific works or industries such as works involving machines, cranes and boilers, and works that are exposed to electricity, heat and dangerous chemicals, etc. The safety measures under these Ministerial Regulations contain a wide range of measures and actions that must be taken by employers, for example, installing warning signs, providing training courses for employees, preparing and maintaining personal protective equipment (PPE) for employees who work in risky areas, etc. Such Ministerial Regulations also impose duties for employers to prepare and submit reports regarding their compliance to relevant authorities.

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To observe and realise the implementation of safety measures under the laws by employers, OSHA stipulates that executives or chief workers of the establishments shall have the duty to support and collaborate with employers to comply with the OSHA regulations. Executives or chief workers are also obliged to inspect or give suggestions to employers to improve working conditions in business establishments to avoid violating the laws. In practice, safety or legal divisions inside many business establishments will create compliance checklists in their internal manuals to conveniently and routinely check their compliance with the laws.

### Third parties

#### 8 | Does the employer owe a duty to protect the health and safety of third parties? If so, what is the nature and extent of this duty?

The duty of employers to maintain occupational safety, health and the environment is not limited only to their direct employees, but also extends to any person who works or generates benefits for the employers or business establishments even if such person is not directly hired by employers, such as employees of third-party vendors who are dispatched to work inside the establishments.

### Work premises

#### 9 | What is the nature and extent of the employer's duty to ensure safe work premises?

Under OSHA, the employer is obliged to maintain the occupational safety, health and environment of workplaces and to prevent any danger to employees' lives, bodies, mentality and health. This obligation applies to all workplaces and establishments where employees work, regardless of whether or not such establishments are controlled or owned by the employers.

If multiple employers share the same establishment, all employers shall be required to cooperate and jointly maintain occupational safety, health and the environment in the establishment.

Apart from OSHA, facilities that must be installed inside the workplaces are also stipulated in other laws, for example:

- a business establishment must have first-aid rooms and a number of toilets according to the number of employees under the Labour Protection Act of 1998;
- a smoking room must be installed to divide smoking and non-smoking areas under the Tobacco Products Control Act of 2017; and
- an office building that is deemed a large building under the law shall provide facilities to support accessibility for handicapped or elderly persons under the Building Control Act of 1979.

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## Plant and equipment

### 10 | What are the employer's duties and responsibilities regarding the provision of safe plant and equipment?

The employer's duties and responsibilities regarding the provision of safe plant and equipment are stipulated under the Ministerial Regulations issued under OSHA. Such Ministerial Regulations provide minimum standards for the arrangement of fixtures inside worksites to prevent accidents depending on the characteristics of particular worksites, for example, worksites that have machines in operation shall not have an entrance or exit less than 80 centimetres wide, or a curved mirror shall be installed at a corner or junction in worksites that have forklifts, etc.

In terms of safety equipment, PPE that is provided for employees by employers must comply with the standards announced by the Department of Labour Protection and Welfare under the Ministry of Labour (DLPW). Safety officers inside business establishments also have the legal duty to perform daily inspections of machines and tools in worksites to ensure safe conditions before starting their operation.

## Work systems, training and supervision

### 11 | What are the employer's duties and responsibilities regarding the provision of safe work systems and adequate training and supervision?

Thai laws do not exactly mention or define the term 'safe work system', but the concept of a safe work system is similar to the 'safety management system' under the OSHA regime. Under the [Ministry Regulation prescribing the Standard for Safety Management System of 2022](#) issued under OSHA, employers in specific establishments, such as factories, hotels, department stores, transportation industries or hospitals with 50 or more employees, are required to have a safety management system for their establishments. Such safety management system shall at least consist of a safety policy, organisational management regarding safety, an internal safety plan, criteria for evaluation and revision of the safety management system and plans for improvement of the safety management system.

Alternatively, the employer may choose to adopt the safety system based on international standards, such as the safety standard under ISO45001. In addition to the implementation of the safety management system, safety officers must also be stationed to be responsible for the planning and administration of safety regulations in the line of duty.

In terms of training and supervision, OSHA imposes the duty to any employer, regardless of its business or industry, to have its executives, chief workers and every employee undergo training on occupation safety, health and environment to realise the safety measure inside its establishment. Such training must be given to any newly hired employees, employees who are transferred from another position or another establishment, or when new machinery or equipment is introduced into the work line. The training must contain curriculums that comply with the standards under the laws.

In addition to general training, the law also requires the employer to provide special training courses for works that are prone to severe health risks, such as training courses for works

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in confined spaces and safety training for works that are related to electricity. Upon the provision of these special courses, the employer shall record the names of employees who have passed the courses, as well as the names of the instructors, to present to the inspection authorities or to submit to the relevant authorities as required under the law.

## Accident response and reporting

### 12 | What rules and requirements govern employers' response to and reporting of workplace accidents?

Under Thai law, employers' duty to report workplace accidents is stipulated in various laws depending on the objectives of the report, the nature of the accident and the location of the accident. The reports are the responsibility of specific regulators. The main authorities who are responsible for receiving accident reports include:

- the DLPW: under OSHA, employers must report the details of the incident to the safety inspection authority in writing immediately or within a designated period when there is a serious accident or an employee faces any danger from work in business establishments;
- the Social Security Office: under the Workmen's Compensation Act, employers shall notify the occurrence of an accident, sickness or disappearance of an employee to the local Social Security Office within 15 days of the date when the employer is aware of such incident or should have known of such incident; and
- the Department of Industrial Works (DIW): under the provisions of the Factory Act of 1992 (the Factory Act), if the establishment of the employer is a factory and there is an accident in the factory, the employer shall report in writing the occurrence of:
  - any accident that caused casualty, sickness or injury to an employee in which such employee cannot resume their work within 72 hours after the accident; or
  - any accident that forced the factory to suspend its operation for more than seven days to DIW within the period designated by the Factory Act.

In addition to the laws above, employers are also required to report defects or malfunction in machinery or substances that will likely cause harm to employees even before the occurrence of an actual accident under special laws, for example, a defect or abnormality that is found within a nuclear reactor shall be reported to the Office of Atoms for Peace without delay and such reactor must be immediately shut down under the Nuclear Energy for Peace Act of 2016.

## Risk assessments

### 13 | What rules, requirements, procedures and best practices should employers be aware of when conducting occupational risk and hazard assessments?

Risk assessment is an important measure to manage and maintain occupational safety and the environment in the workplace. In this regard, OSHA imposes a duty upon employers to perform a risk assessment. However, the types of businesses that require risk assessments and the period of assessment are not clearly defined by the law.

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Due to the above reason, in practice, business establishments that are factories opt to perform risk and hazard assessment under the rules, requirements and procedures of the Factory Act, namely, the [Regulation of Department of Industrial Works on Criteria for Hazard Identification, Risk Assessment, and Establishment of Risk Management Plan of 2000](#) dated 17 November 2000. Establishments that are not factories may choose to adopt the Occupational Safety and Health Risk Assessment Standard published by the Thailand Institute of Occupational Safety and Health as a guideline.

## Disclosure and reporting requirements

### 14 | Are employers required to submit regular health and safety reports to the relevant authorities? If so, what is the nature and extent of this requirement?

Employers have the legal duty to conduct inspections and periodically submit health and safety reports to the relevant authorities, depending on the industry in question, the characteristics of the works and other conditions stipulated by law. The main authority responsible for receiving the report is the DLPW, the OSHA regulator. Examples of reports to be submitted to the DLPW include reports regarding:

- the operation of safety officers;
- health risks to employees in the case where dangerous chemicals are used; and
- the measurement and analysis of working conditions for light, heat and noise volume in business establishments, etc.

In addition to the duty to submit reports to the DLPW, health and safety reports are also required to be submitted for particular types of establishments regulated under specific laws, for example, establishments that are factories shall be required to submit annual boiler safety inspection reports to the DIW under the Factory Act and establishments with liquid petroleum gas (LPG) storage must file LPG storage tank safety inspection reports to the Department of Energy Business under the Fuel Oil Control Act of 1999. Due to the variety of regulators, employers should examine the laws that regulate their business to ensure that they have complied with the report duties imposed by the responsible authorities.

## Provision of information to workers

### 15 | What requirements apply regarding the provision of health and safety information to workers?

The provision of health and safety information to workers is one of the important measures to maintain safety in business establishments. Employers have a duty to inform employees of any danger that may occur during work, and to distribute safety manuals to every employee upon hiring employees or changing their positions or places of work.

In addition to general safety manuals, employers shall also provide additional safety information to employees whose work conditions are prone to specific risks stipulated by the laws (eg, safety manuals for works related to electricity, manuals for usage, inspection and maintenance for forklifts, training course of usage and maintenance of PPE, etc). In addition to the safety information, employers are also required under the notification of the Ministry of Public Health issued under [the Occupational Diseases and Environmental Diseases](#)

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[Control Act of 2019](#) to disclose to employees information regarding caution, prevention and symptom of illnesses that are recognised as occupational diseases under the announcement of the Ministry of Public Health, such as illness caused by asbestos, lead or confined space.

Regarding hazardous chemicals, employers have a duty to affix safety labels and prepare safety data sheets as well as to install warning signs in worksites related to dangerous chemicals under the [Ministerial Regulation prescribing the Standard for Administration, Management and Operation of Occupational Safety, Health and Environment relating to Dangerous Chemicals of 2013](#) issued under OSHA and the [Hazardous Substances Act of 1992 \(the Hazardous Substances Act\)](#).

Apart from legal requirements, regulators charged with hazardous substances such as the DIW, the Food and Drug Administration and the Department of Livestock Development have adapted the Globally Harmonised System of Classification and Labelling of Chemicals to standardise the classification and level of hazard of chemicals under their jurisdiction.

### Insurance requirements

#### 16 | What insurance must employers carry to cover liability for occupational health and safety risks?

Under Thai law, employers have no legal obligation to take on any insurance liability for occupational health and safety risks. Instead, the compensation scheme under the Workmen's Compensation Act provides a similar function to insurance for employees. Under the said Act, any employer who hires one or more employees shall be obliged to pay its contribution to the workmen's compensation fund. The workmen's compensation fund is a state-organised fund established under the Workmen's Compensation Act and will compensate employees for injury, sickness or death in the course of employment.

Although there is no legal obligation for employers to take on any insurance liability for occupational health and safety risks, in practice many companies choose to voluntarily take on a risk insurance policy or group insurance for employees as a form of welfare. Further, prominent insurance companies in Thailand also offer various policies to suit the need and size of businesses.

### Other duties and responsibilities

#### 17 | Are employers subject to any other notable health and safety duties and responsibilities in your jurisdiction?

Apart from OSHA, which is the main regulation that imposes the duty for employers to maintain occupational safety, health and environment in workplaces, many regulations in Thailand impose additional duties upon employers depending on the characteristics of the business and related machines or substances. For example, employers whose establishments are factories shall be obliged to comply with safety regulations under the Factory Act; establishments that possess radiation-generating devices must comply with the regulations in the Nuclear Energy for Peace Act of 2016; and employers who are importers, manufacturers, transporters or possessors of hazardous substances must comply with the Hazardous Substances Act. Local governments in each municipality may also be authorised

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to issue safety or cleanliness ordinances within each area under the laws related to cleanliness or town planning.

## WORKER DUTIES, RIGHTS AND RESPONSIBILITIES

### Primary duty

- 18** | What is the nature and extent of a worker's duty to protect their own and others' health and safety under the relevant legislation and regulatory framework?

Under the Occupational Safety, Health and Environment Act of 2011 (OSHA), employees shall have the duty to cooperate with employers in implementing and promoting occupational safety, health and environment during work. However, OSHA imposes no penalty on an employee who fails to give their cooperation. In practice, however, compliance with the employer's safety measures will be generally included as the employee's duties in work rules. Thus, failure to comply with the safety measures in work rules may result in disciplinary action or the employment termination of the employee.

### Consultation and collaboration with employers

- 19** | Are workers in your jurisdiction entitled or required to consult and collaborate with their employer in relation to the development and implementation of health and safety measures and policies?

In principle, the duty to designate health and safety measures and policies shall belong to employers. Certain types of business establishments such as factories, hotels and department stores are required by OSHA to appoint responsible employees to become safety officers and a committee for operational safety, health and the environment in workplaces. In such establishments, the appointed safety officers and committee have the duty to consult and collaborate with their employer concerning the development and implementation of health and safety measures and policies. In this regard, the capacity of safety officers and their duty will depend on the ranks they have been appointed. Specifically, safety officers who are ranked from a technical level or above are required to, among other things, designate preventive measures and safe working procedures and then propose them to the employer. The safety committee in each establishment will be responsible for preparing occupational safety and health policies, reviewing the occupational safety and health manual and considering projects or plans for safety training, and then proposing them to employers, as well as other responsibilities designated by the relevant Ministerial Regulation. The scope of safety plans adopted in business establishments may extend to matters that are not directly related to the prevention of accidents (eg, the prevention of work-related sickness or nuisances).

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## Trade unions

### 20 | What role do trade unions play in protecting occupational health and safety in your jurisdiction?

In principle, the main objectives of trade unions are in accordance with the Labour Relations Act of 1975, namely:

- to protect and seek benefits for employees who are members of a trade union; and
- to represent and act on behalf of the employees when negotiating with the employers for the benefit of the employees.

Trade unions can also participate in the investigation of workplace accidents or cooperate with the employer to prevent accidents.

## Whistle-blowing

### 21 | Are workers afforded any legal protections against reprisals for whistle-blowing in relation to occupational health and safety risks?

Presently, Thailand has no specific law on whistle-blowing concerning occupational health and safety risks. However, the measure to protect employees who filed a complaint against reprisals can be found in the work rules of many companies. Although the law does not require employers' work rules to have the protection measure for whistle-blowers in place, in practice, work rules in many companies and the template work rules recommended by the Department of Labour Protection and Welfare under the Ministry of Labour contain a standard provision that an employee who files a petition, gives a statement, information or becomes a witness or becomes members of the disciplinary panel, shall not receive retaliation by dismissal, punishment or any negative actions from the employers, provided that the employee has faithfully filed the petition or given the statement or performed their duty on the disciplinary panel.

Further, OSHA prohibits employers from dismissing an employee or changing the employee's work position if the said employee files a lawsuit, becomes a witness or gives statements on operational safety or the environment of the workplace to the safety inspection authority or official committees established under OSHA or the courts.

## Right to refuse work

### 22 | Do workers have the right to refuse work or seek reassignment in hazardous situations?

Thai laws do not stipulate the right to refuse work or seek reassignment in hazardous situations as a general principle. The right to refuse work or seek reassignment in hazardous situations can be found only in specific cases under the law. For example, under the Labour Protection Act of 1998, a pregnant woman is allowed to submit a pregnancy certificate to her employer to be temporarily assigned to another position either before giving birth or after giving birth if the current position is not suitable for her condition, and the employer shall consider such request to assign the employee to a more suitable position.

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Several Ministerial Regulations issued under OSHA regarding risky working conditions also address the right to refuse work, for example, under the Ministerial Regulation prescribing the Standard for Administration, Management and Operation of Occupational Safety, Health and Environment relating to Confined Space Work of 2019, an employee who works in a confined space may refuse to work in a certain mission if they view that appropriate safety measures have not been prepared for such mission.

## HAZARDS AND RISKS

### Hazardous substances and chemicals

**23** | What occupational health and safety rules govern the handling and use of hazardous substances and chemicals? What are the practical implications of these rules?

The main laws governing the handling and use of hazardous substances and chemicals are the Ministerial Regulation Prescribing Standard for Administration, Management and Operation of Occupational Safety, Health and Environment relating to Dangerous Chemicals of 2013 (the Ministerial Regulation on Dangerous Chemicals) issued under the Occupational Safety, Health and Environment Act (OSHA) of 2011 and the Hazardous Substances Act of 1992 (the Hazardous Substances Act). In this regard, the Ministerial Regulation on Dangerous Chemicals focuses on imposing a standard for the employer upon the usage and storage of dangerous chemicals to prevent harm against its employees, while the Hazardous Substances Act focuses on imposing the duties to obtain licences for manufacturing, importing, exporting, possessing and advertising regulated chemicals.

Since the regulations on hazardous substances and chemicals are governed by the two main laws mentioned above, the same types of chemicals can be regulated by both laws and have the same duties under these laws. In such cases, business operators involved in regulated chemicals are required to create a safety data sheet or report to relevant authorities under both laws; in other words, chemicals regulated under OSHA shall be reported to the Department of Labour Protection and Welfare under the Ministry of Labour (DLPW), while the same chemicals that are also regulated under the Hazardous Substances Act shall also be reported to the Department of Industrial Works or other authorities who are in charge of the hazardous substance.

Further, hazardous substances or dangerous chemicals that can be used as weapons components, such as chlorine, are also regulated under the Weapon Control Act of 1987 and require a licence to possess. The transportation of hazardous substances is also subjected to regulation under the Land Transport Act of 1979.

### Heavy machinery

**24** | What occupational health and safety rules govern the operation of heavy machinery? What are the practical implications of these rules?

No law particularly governs the operation of heavy machinery in Thailand. The operation of machinery, in general, is governed by the [Ministerial Regulation prescribing the](#)

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[Standard for Administration, Management and Operation of Occupational Safety, Health and Environment relating to Machines, Cranes and Boilers of 2021 \(the Machines, Cranes and Boilers Ministerial Regulation\)](#). Specifications of cranes that are regulated under this Ministerial Regulation also include large-size cranes that can be deemed as heavy machinery. Employers have a general duty to maintain the safety of machines to be in a good and safe condition before being used by employees and should perform an annual inspection for certain types of machines that are stipulated in the Machines, Cranes and Boilers Ministerial Regulation, such as concrete mixers, drilling rock machines, tunnel boring machine and demolition shears.

Certain types of machinery related to construction work such as pile drivers or drilling machines can also be subject to the Ministerial Regulation prescribing the Standard for Administration, Management and Operation of the Occupational Safety, Health and Environment relating to Construction Work of 2021. The said Ministerial Regulation imposes safety measures in particular for works on construction sites. For example, after a pile driver has been installed on the site, the employer must arrange to have an engineer inspect the pile driver before operation.

### General machinery

#### 25 | What occupational health and safety rules govern the operation of general machinery in the workplace?

The main law that governs the operation of general machinery in the workplace is the Machines, Cranes and Boilers Ministerial Regulation issued under OSHA. This Ministerial Regulation imposes safety measures for general machinery, such as pressing machines, as well as heavy machinery such as cranes and boilers. The safety measures include measures to prevent danger towards machine operators and also to eliminate the risk of accidents at the locations where machines are installed, by requiring employers to designate hazard zones in areas near the machines.

The Machines, Cranes and Boilers Ministerial Regulation also imposes machine guarding requirements, such as requiring the installation of an earth wire for machines that use electricity, or the installation of barriers to prevent contact with the dangerous parts of machines that have conveyers or moving wheels and are more than two metres tall.

### Lock-out and tag-out

#### 26 | What occupational health and safety rules govern how employees are protected while performing service and maintenance on machinery and equipment? Any there any exceptions to these rules?

At present, several Ministerial Regulations issued under OSHA mention lock-out and tag-out, including:

- the Ministerial Regulation prescribing the Standard for Administration, Management and Operation of Occupational Safety, Health and Environment relating to Machines, Cranes and Boilers of 2021;

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- the Ministerial Regulation prescribing the Standard for Administration, Management and Operation of Occupational Safety, Health and Environment relating to Confined Space Work of 2019; and
- the Ministerial Regulation prescribing the Standard for Administration, Management and Operation of Occupational Safety, Health and Environment relating to Electricity of 2015.

Under these Ministerial Regulations, lock-out and tag-out will be performed to cut off electricity sources from machines and prevent any person from reaching the engine switches, to avoid any accidental operation and to prevent danger to employees while performing service and maintenance on machinery and equipment.

### Ergonomic risks and eye strain

#### 27 | What rules and measures apply to manage ergonomic risks and eye strain in the workplace?

Under the Labour Protection Act of 1998 (the Labour Protection Act), the maximum weight that the employer may order an employee to lift by physical force must not exceed the average weight designated under the Ministerial Regulation issued under the Labour Protection Act. At present, the [Ministerial Regulation of the Ministry of Labour on Maximum Allowable Weight of Lifting of 2004](#) stipulates the allowable weights as follows:

- a female worker from 15 to 18 years of age: 20 kilograms;
- a male worker from 15 to 18 years of age and a female worker from 18 years of age: 25 kilograms; and
- a male worker from 18 years of age: 50 kilograms

If the lifting weight is above the allowable weight, the employer must provide an appropriate labour-saving device to employees. As for other ergonomic risks, Thai laws impose no legal duties for the employer to carry out any measure or management to reduce such risk. In practice, the employer may voluntarily choose to adopt a corporate guideline or the Ergonomics Standard on Manual Materials Handling issued by the Thailand Institute of Occupational Safety and Health.

For the protection of eye strain in the workplace, the employer shall maintain the establishment by ensuring that it does not have an illuminance volume less than the level designated by law. In the case of work that involves light sources or sunlight with significant glare, the employer must provide employees with suitable protective equipment at all times during work or provide appropriate lighting in the case of work in dark places. The employer must also measure and analyse the illuminance volume in the workplace and submit an annual report to the DLPW under the [Ministerial Regulation prescribing the Standard for the Administration and Management of Occupational Safety, Health and Environment relating to Heat, Light and Noise of 2006](#) issued under OSHA (the [Ministerial Regulation on Heat, Light and Noise](#)).

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## Noise and temperature

### 28 | What rules and measures apply to manage risks arising from workers' exposure to noise and temperature extremes?

Employers have the duty to control noise and heat in the establishment to not exceed the volume designated by law. If the noise or heat is above the allowable level and there is no method to reduce such effect, employers shall provide employees with protection gear and instruct employees to wear such gear at all times. If the average volume of noise during eight hours of work is above 85 decibels A (dB(A)), employers shall also designate hearing conservation measures in workplaces.

Additionally, employers in certain types of business designated in the Ministerial Regulation on Heat, Light and Noise issued under OSHA are also required to measure the level of noise and heat in their business establishment and submit reports to the DLPW annually.

## Fire risks

### 29 | What rules, restrictions and procedures govern the assessment and management of fire risks in the workplace?

The assessment and management of fire risks in the workplace are mainly governed by the Ministerial Regulation prescribing the Standard for Administration, Management and Operation of Occupational Safety, Health and Environment relating to Fire Prevention and Control of 2012 issued under OSHA. Under this Ministerial Regulation, an employer whose business establishment has more than 10 employees must have a fire safety emergency plan. This emergency plan shall include fire monitoring measures, safety training, fire extinguisher instruction, an evacuation plan and a remedy. In terms of the installation of fire protection equipment such as fire extinguishers or water reserves, employers must evaluate the fire risk in their area on a self-evaluation basis and the result from this self-evaluation will determine the level of equipment that must be installed.

Additionally, if the employers are the owners of buildings where business establishments are located, these employers also have duties to prevent fire risk under building-related laws. For example, under the Building Control Act of 1979, buildings of 10,000 square metres or more are required to install fire protection systems inside them and have annual inspections performed to maintain the equipment.

## Psychiatric harm from stress, abuse and violence

### 30 | What rules and measures apply to prevent and address psychiatric harm arising from workplace stress, abuse and violence?

OSHA vaguely addresses psychiatric harm arising from workplace stress, abuse and violence by stipulating that the duty of employers is to support and promote the work operation of employees by preventing them from physical, mental and health harm. However, in practice, there are no specific rules or measures to prevent and address such psychiatric harm. Any individual who inflicts psychological damage onto another person may be subject to a petty offence under the Criminal Code for threats or humiliation in public.

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## Special categories of worker

### 31 | Are there any notable rules or procedures providing additional health and safety protection to special categories of worker?

Special categories of workers, for example, child workers, female workers and pregnant workers, are specifically protected under the Labour Protection Act and shall be prohibited from certain dangerous works (eg, child workers are prohibited from metal smelting, blowing, casting or forging works; female workers are prohibited from mining or construction work that must be done underground, underwater, in a cave, tunnel or mountain shaft, unless the characteristics of the work do not pose a hazard to the health or the body of the female employees; and pregnant workers are prohibited from work connected with vibrating machinery or engines).

Currently, Thailand has yet to announce any mandatory specific health and safety protection for older workers and workers with disabilities, but these workers may be entitled to accessible facilities that are specially designed for handicapped and elderly persons set out under the building control laws and the laws on empowerment of persons with disabilities. However, since the number of Thailand's ageing population is growing, an announcement from the Ministry of Labour on 8 March 2019 called on employers not to assign work that may cause a hazard to health and safety to elderly workers.

## Other hazards and risks

### 32 | Are there any notable rules, restrictions or procedures applicable to other occupational hazards and risks in your jurisdiction?

Apart from OSHA, specific occupational hazards and risks can be addressed by other laws related to specific industries or characteristics of workers, for example:

- the Occupational Diseases and Environmental Diseases Control Act of 2019;
- the Fuel Oil Control Act of 1999;
- the Nuclear Energy for Peace Act of 2016;
- the Labour Protection in Fisheries Act of 2019; and
- the Protection of Employees in Home-Based Work Act of 2010.

## ENFORCEMENT

### Inspections and investigations

### 33 | What rules and procedures govern the enforcement authorities' inspection of workplaces and investigation of employers for health and safety violations?

Under the Occupational Safety, Health and Environment Act of 2011 (OSHA), a safety inspection authority appointed under OSHA is empowered to enter an establishment or office of an employer during working hours or when there is an incident, to inspect the working conditions, machinery or equipment, or to enquire about facts or investigate any matters within the scope of their power. If any health and safety violations are found, the safety

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inspection authority has the power to order the employer to stop such violating acts or to rectify, improve or comply accurately or properly within the prescribed time.

### Cooperating with authorities

#### **34** | What best practices and practical considerations should employers bear in mind when cooperating with and responding to inspections and investigations by the health and safety authorities?

Upon an ordinary inspection performed by safety inspection authorities, officers will request documents or evidence of employers' compliance with the laws. Officers are also authorised under OSHA to take photographs or statements from employees as well as to issue instructions and warnings to employers. It is strongly recommended that employers adhere to the official instruction or warnings, to reduce any scrutiny from a law enforcement officer. Before imposing the actual criminal penalty upon the employer, a law enforcement officer may order an official warning and designate a time frame for the employer to rectify its violation. Once the employer complies with the order within the time frame, the criminal charge against the employer will be dropped according to OSHA.

Further, in the case that the employer fails to adhere to the official warning and the employer's violation may cause imminent danger, the Director-General of the Department of Labour Protection and Welfare (DLPW) under the Ministry of Labour is authorised to order officers or any person to enter the employer's establishment to enforce the official order to eliminate the danger. In such a case, the employer must be responsible for all actual expenses incurred by the authority.

### Penalties and notices

#### **35** | What administrative penalties and notices may the authorities impose on employers for health and safety violations? Can these be appealed?

Under OSHA, if any health and safety violation is found, a safety inspection authority shall have the power to order the employer to stop such violating acts or to rectify, improve or comply accurately or properly within 30 days. Such a time frame can be extended no more than twice. Also, if necessary, upon the permission of the Director-General of the DLPW, or a person entrusted by the Director-General, the safety inspection authority may order the employer to stop the use of the machinery, equipment or premises or to bind and seal items that may cause severe danger to employees, in whole or in part, until the employer has rectified and improved the working conditions in compliance with the order of the safety inspection authority.

The appeal against such order of the safety inspection authority may be lodged by the employer to the Director-General of the DLPW or the official committees established under OSHA, as the case may be, within 30 days from the date of acknowledgement of the order. The Director-General of the DLPW or the official committee, as the case may be, shall decide the appeal within 30 days from the date of receipt, and their decision shall be final.

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## Civil liability

### 36 | What is the extent of the employer's civil liability for health and safety violations? Can this liability be limited in any way? What defences apply?

Presently, OSHA imposes no civil liability for health and safety violations. However, if a violation causes any damage, the victim may be entitled to claim compensation by tort liability under the Civil and Commercial Code. To seek indemnification from the proprietors, the victim has a burden to prove that the proprietor's actions:

- were wilful or negligent;
- were unlawful;
- resulted in injury; and
- resulted in damages caused by such an unlawful act.

Moreover, if such violation concerns a pollution leak, the employer, as the owner of the pollution source, may be subject to civil liability against the employee, any third party or the state under the Enhancement and Conservation of the National Environmental Quality Act of 1992, regardless of whether such pollution is the result of a wilful or negligent act of the employer, except in the case of:

- force majeure;
- acting under the instruction of the government; and
- when the pollution is caused by a third party.

In principle, tort liability cannot be limited and the liable party shall be required to pay compensation as proven by the victim and ordered by the court. The amount of compensation can be settled between the proprietor and the victim by an in court-agreement, provided that such amount is fair and appropriate to restore the damage.

## Criminal liability

### 37 | May employers be criminally liable for health and safety violations? What defences apply?

Employers that fail to comply with OSHA as well as any Ministerial Regulations and official notifications issued thereof will be subject to criminal penalties under OSHA. It must be noted that the criminal penalties under OSHA are considerably high compared to other laws of similar nature. Some offences under OSHA can be settled by fine payment and criminal charges will be dismissed once the fine is paid.

If any violation of the law is discovered by the inspection authority, officers may choose to issue a warning to the employer before imposing a criminal penalty upon the employer. The employer who can comply with the officer's warning and rectify its violation within the designated time frame will be released from criminal charges according to section 43 of OSHA.

It can be relatively difficult for employers to defend themselves against OSHA violation charges, even in cases where the accident may be caused by an employee's negligence. This is because employers are obliged to monitor and supervise their employees to follow

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safety instructions, so accidents can be viewed as the result of the employer's failure to perform their supervising duty. On the other hand, employers may defend themselves from liability if it can be proven that the employer has used their best effort to prevent the accident, for example, the employer has issued a warning against an employee who fails to wear protective equipment or has suspended such employee from working, but the employee has continued to ignore the instruction.

### Director and officer liability

#### 38 | To what extent may company directors and officers be held liable for health and safety violations?

Under section 69 of OSHA, if the violator of the law is a legal person and such violation is caused by orders or actions, or from failure to give orders or the omission of duties that must be performed by the managing director or responsible person in the juristic person, such as an authorised director in a company or a supervisor in charge, the said person shall be liable for the same penalty as the juristic person.

## UPDATE AND TRENDS

### Recent developments

#### 39 | What have been the most significant recent occupational health and safety developments in your jurisdiction, including any notable court decisions and regulatory actions?

From 2022 to the present date, there have been two noticeable developments in occupational health and safety laws through the introduction of the following new Ministerial Regulations.

#### **Ministerial Regulation prescribing the Standard for Safety Management System of 2022 (Safety System Ministerial Regulation)**

This new Safety [System Ministerial Regulation](#) revokes the previous regulation that did not have a detailed stipulation regarding safety systems, and as a consequence, failed to become practically effective. The new Safety System Ministerial Regulation requires specific types of business establishments, with 50 or more employees, to implement the safety management system and stipulates clearer details for the implementation of the safety management system. Moreover, the scope of industries that are required to implement the safety management system under the Safety System Ministerial Regulation has also been expanded to cover a wide range of businesses, such as retail or wholesale businesses, trade exhibitions and convention centres, amusement parks, etc.

Alternatively, business establishments that are subject to implement the safety management system under the Safety System Ministerial Regulation may also choose to comply with recognised standards instead, such as standards certified by the International Organization for Standardization, the British Standards Institution, the American National Standards Institute or the Occupational Safety and Health Administration of the Department of Labour of the United States, or any other equivalent standards that may be later certified by the

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Director-General of the Department of Labour Protection and Welfare under the Ministry of Labour.

It can be expected that the enactment of the new Safety System Ministerial Regulation will enhance the safety management system among business establishments and allow Thai businesses to adapt international standards that may subsequently increase the competitiveness of Thai businesses in the global market.

### **Ministerial Regulation on Arrangement of Occupational Safety Officers, Personnel, Department, or Committee to Operate Safety in the Workplace of 2022**

This new [Regulation](#) overhauls the old criteria, qualifications and requirements for the appointment of safety officers, a safety committee and a safety department in the workplace. The key takeaway of this Regulation is that it revises the target businesses required to have a safety officer, committee and safety department into 64 businesses divided into List 1, List 2 and List 3, which correspond to the level of safety risk in the workplace: high, medium and low, respectively. It also introduces new reporting duties on the part of the business to the employers and safety personnel of the employer.

In addition to the Ministerial Regulations above, in 2021 several Ministerial Regulations were enacted under the Occupational Safety, Health and Environment Act of 2011 to prescribe updated safety standards for certain activities in construction sites, such as the use of scaffolding and structure supports, the risk of falling and the risk of collapsing of structure.

## NAGASHIMA OHNO & TSUNEMATSU

---

[Shohei Sasaki](#)

shohei\_sasaki@noandt.com

[Yothin Intaraprasong](#)

yothin\_intaraprasong@noandt.com

[Nopparak Yangiam](#)

np\_yangiam@noandt.com

[Ponpun Krataykhwan](#)

ponpun\_krataykhwan@noandt.com

---

34th Floor, Bhiraj Tower at EmQuartier, 689 Sukhumvit Road,  
Klongton Nuea, Vadhana, Bangkok 10110, Thailand

Tel: +66 2 302 4800

[www.noandt.com](http://www.noandt.com)

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# United States

[Jonathan L Snare](#), [Jason S Mills](#) and [Alana F Genderson\\*](#)

[Morgan, Lewis & Bockius LLP](#)

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## LEGAL FRAMEWORK

### Legislation

- 1 | What legislation governs occupational health and safety in your jurisdiction? Are there any notable sector-specific laws or exclusions from the primary legislation?

The [Occupational Safety and Health Act of 1970](#) (the OSH Act) established the Occupational Safety and Health Administration (OSHA), a regulatory and enforcement agency that promulgates and enforces workplace health and safety standards. However, the OSH Act allows states and territories to submit a 'state plan' to OSHA for approval. If approved, the responsibility to enact and enforce workplace health and safety standards within that jurisdiction passes to a state agency. More than half of the states in the United States have an OSHA-approved state plan, while the remaining states are administered by OSHA directly.

In addition, the OSH Act does not cover self-employed workers, immediate family members of farm employers, and workers whose hazards are regulated by another federal agency (for example, the Mine Safety and Health Administration, the Department of Energy, Federal Aviation Administration or Coast Guard).

Additionally, the [Fair Labor Standards Act of 1938](#) contains rules concerning the employment of young workers, such as minimum age restrictions for employment, restrictions on the times of day youth may work and the jobs they may perform.

### Regulations

- 2 | How are regulations relating to occupational health and safety generally issued in your jurisdiction? What compliance obligations do these regulations generally impose on employers?

Under the OSH Act, when the Secretary of Labor (the Secretary) determines that a rule promulgating, modifying or revoking an occupational health and safety standard is necessary, the Secretary may request the recommendations of an advisory committee. The advisory committee must submit its recommendations within 90 days or a longer or shorter period set by the Secretary, but never longer than 270 days. The Secretary will often decide on its own what regulations to promulgate based on the policy priorities of the Departmental

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leadership. The Secretary has the authority to issue regulations for the general, maritime and construction industries.

The Secretary must publish a proposed rule in the Federal Register and allow stakeholders or interested persons at least 30 days (and often 60 or 90 days) after publication to submit written data, comments, objections and a request for a public hearing. Hearings are more typically utilised in the rulemaking process for health standards and other more complex standards. If a hearing is requested, the Secretary must publish a notice specifying a time and place for a public hearing in the Federal Register within 30 days after the last day of the public comments period. Within 60 days after the last day of the public comments period or, if a hearing was held, within 60 days after the public hearing, the Secretary must issue the rule.

Section 5 of the OSH Act requires that all covered employers comply with all occupational health and safety standards promulgated under the Act.

### Applicable employers and workers

#### 3 | Which employers and workers are subject to the occupational health and safety regime? Are there any notable exclusions?

Section 5 of the OSH Act requires that employers:

- provide employees with a place of employment free from recognised hazards that cause or are likely to cause death or serious physical harm; and
- comply with all occupational health and safety standards promulgated under the Act.

The term 'employer' means a person engaged in a business affecting commerce who has employees but does not include the United States (excluding the United States Postal Service) or any state or political subdivision of a state. The term 'employee' means an employee of an employer who is employed in a business of their employer that affects commerce.

Additionally, section 19 of the OSH Act makes the heads of each federal agency responsible for establishing and maintaining an effective and comprehensive occupational health and safety programme that is consistent with standards promulgated under the Act.

State and local government workers are not covered by the OSH Act, but they may have occupational health and safety protections if they are located in a state with a state plan approved by OSHA that covers public-sector workers. The OSH Act allows states and territories to submit a state plan to OSHA for approval. If approved, the responsibility to enact and enforce workplace health and safety standards within that jurisdiction passes to a state agency. More than half of the states in the United States have an OSHA-approved state plan.

Those specifically not covered under the OSH Act are the self-employed, immediate family members of farm employers and workplace hazards regulated by another federal agency (eg, the Mine Safety and Health Administration).

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## Applicable risks

### 4 | Which health and safety risks are covered under the relevant legislation?

The provisions within the OSH Act broadly cover all occupational safety and health risks to covered workers. This means that if a covered employee is exposed to a work-related hazard, OSHA may have jurisdiction. Work-relatedness generally is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment.

To the extent that OSHA does not have a standard or regulation on a specific safety and health topic, it defaults to [section 5\(a\)\(1\)](#) to pursue enforcement actions. This section, often referred to as the 'general duty clause', requires covered employers to provide employees with a place of employment free from recognised hazards that cause or are likely to cause death or serious physical harm.

## Authorities

### 5 | What government authorities are charged with the enforcement and administration of the occupational health and safety regime in your jurisdiction? What is the extent of their activities and powers?

The OSH Act created OSHA, which is administered by and through the Department of Labor. Section 8 of the OSH Act grants the Secretary of Labor the power to enter places of employment to perform inspections and investigations. Section 9 of the OSH Act grants the Secretary the power to issue citations if, upon inspection or investigation, the Secretary or their authorised representatives believe that an employer has violated a requirement under the OSH Act or an occupational health and safety standard promulgated under the Act. Section 17 of the OSH Act grants the Secretary the power to assess civil penalties for violations.

## Soft law and guidance

### 6 | Has the government issued any guidance or codes of practice relating to occupational health and safety in your jurisdiction? What force do these have and how are they implemented in practice?

OSHA has issued a vast body of guidance materials related to specific occupational health and safety issues, industry-specific issues or issues related to OSHA's occupational health and safety standards. These guidance materials are available on OSHA's [website](#). Where there is OSHA guidance on a topic but no specific standard on a point, OSHA may try to enforce the guidance with a General Duty Clause violation.

Section 5 of the OSH Act, also known as the General Duty Clause, requires that employers provide employees with a place of employment free from recognised hazards that cause or are likely to cause death or serious physical harm ('serious physical harm' means that a part of the body is damaged so severely that it cannot be used or cannot be used very well). If an employer fails to comply with OSHA guidance and this failure results in workplace hazards that cause or are likely to cause death or serious physical harm, then OSHA may issue a citation to the employer and assess civil penalties for a violation of the General Duty Clause.

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## EMPLOYER DUTIES AND RESPONSIBILITIES

### Primary duty

- 7** | What is the nature and extent of the employer's primary duty to protect workers' health and safety under the relevant legislation? How is this duty observed and interpreted in practice?

Under the Occupational Safety and Health Act of 1970 (the OSH Act), employers must provide a safe and healthy workplace for their employees. This includes preventing serious recognised hazards, providing adequate safety training and maintaining records of work-related injuries and illnesses, among other requirements. In practice, this means that employers must monitor their operations, periodically inspect for safety hazards, communicate with their employees about potential hazards and correct hazards that they identify. Employer obligations also include day-to-day considerations, like ensuring that employees have the appropriate personal protective equipment and making sure that all such equipment is properly maintained. Unless an exemption applies, employers also are required to maintain employee injury logs, which they must provide to the Occupational Safety and Health Administration (OSHA) upon request, and report all work-related injuries that result in death, amputation, loss of eye or in-patient hospitalisation.

### Third parties

- 8** | Does the employer owe a duty to protect the health and safety of third parties? If so, what is the nature and extent of this duty?

As a general matter, OSHA focuses on the employer's duty to protect its own employees, although it is now more common for one employer to be cited for hazards to which another employer's employees were exposed. This is due to OSHA's application of the 'multi-employer worksite doctrine', where different employers on a worksite can be cited for the same hazard, either as a 'controlling', 'exposing', 'creating' or 'correcting' employer. OSHA enforcement does not extend to non-workers (like customers), who may be protected by other laws and an overall duty of care.

### Work premises

- 9** | What is the nature and extent of the employer's duty to ensure safe work premises?

Employers have a responsibility to their employees under the General Duty Clause (section 5 (a)(1) of the OSH Act) to provide a workplace that is 'free from recognised hazards that are causing or are likely to cause death or serious physical harm'. Employers must comply with hazard-specific standards in the workplace as well as any applicable OSHA health and safety regulations. For example, all employers are required to provide sanitary and immediately available restrooms to their employees, among other housekeeping and sanitation standards. Generally speaking, OSHA recommends that all workplaces have at least one employee trained in first aid and cardiopulmonary resuscitation, but this is not required. OSHA does require 'an infirmary, clinic or hospital in near proximity to the workplace' or someone trained to render first aid. First aid supplies must be readily available as well,

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and additional requirements may apply depending on the job at issue. If multiple employers share a worksite, employers should coordinate as needed to ensure that all OSHA standards are met.

## Plant and equipment

### 10 | What are the employer's duties and responsibilities regarding the provision of safe plant and equipment?

As part of their General Duty Clause obligation, US employers not only have a duty to provide employees with safe equipment, but also have a duty to ensure that all tools and equipment are safely and properly maintained. Further, OSHA has issued many regulations that impose requirements on employers on how to maintain and operate certain types of machinery and equipment. These duties and responsibilities will vary depending on the type of machinery and equipment. For example, OSHA has general industry standards on textiles, paper mills, bakery equipment, laundry operations, etc. OSHA also has standards on the importance of fire protection, guarding machinery and locking and tagging out energised equipment before servicing and maintenance.

## Work systems, training and supervision

### 11 | What are the employer's duties and responsibilities regarding the provision of safe work systems and adequate training and supervision?

Employers have several training obligations under OSHA depending on the type of workplace, type of operations and equipment present, among other factors. Generally speaking, employers must provide safety training in a way that employees can understand, including in a language that employees can understand. Employees with supervisory responsibilities also have specific obligations and are required to, 'to the extent of their authority, furnish employees employment and a place of employment that are free from recognised hazards that are causing or are likely to cause death or serious physical harm'. Employers may also have training requirements that vary by industry and task, for example, requirements regarding personal protective equipment, lock-out or tag-out (control of hazardous energy) and forklifts, just to name a few.

## Accident response and reporting

### 12 | What rules and requirements govern employers' response to and reporting of workplace accidents?

Employers in the United States are required to prepare OSHA forms regarding certain types of workplace illnesses and injuries. Employers must keep records of serious work-related illnesses and injuries that satisfy different criteria under the OSHA recordkeeping regulations. Under this set of regulations, employers must also post annual summaries of the OSHA recordkeeping logs as well as allow certain individuals access to these logs. Minor illnesses only requiring first aid do not need to be recorded. OSHA does not require reporting of near misses or close calls (defined as incidents in which an employee may have been hurt under slightly different circumstances) but does strongly encourage employers to investigate them.

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Significantly, employers are required to immediately report employees' deaths directly to OSHA (within eight hours) and promptly report work-related in-patient hospitalisations, amputations or eye loss (within 24 hours).

## Risk assessments

### 13 | What rules, requirements, procedures and best practices should employers be aware of when conducting occupational risk and hazard assessments?

OSHA sets forth requirements for personal protective equipment (PPE) in the workplace at [29 CFR 1910.132\(d\)](#). This standard generally requires that employers:

- assess the workplace to determine if hazards are present, or are likely to be present;
- select, and have each employee use, the types of PPE that will protect affected employees from any hazards identified;
- communicate selection decisions to each affected employee;
- maintain PPE in a sanitary and reliable condition wherever it is necessary;
- assure the adequacy where employees provide their own PPE; and
- provide training to each employee who is required to use PPE.

Further, OSHA's Recommended Practices for Safety and Health Programs suggest:

- collecting information regarding any hazards;
- routinely conducting inspections to identify hazards;
- identifying any health hazards (as opposed to physical hazards);
- completing investigations into any incidents;
- identifying hazards related to emergent or otherwise nonroutine or infrequent situations and characterising the nature of all hazards identified;
- determining interim control measures; and
- prioritising hazards to be addressed.

## Disclosure and reporting requirements

### 14 | Are employers required to submit regular health and safety reports to the relevant authorities? If so, what is the nature and extent of this requirement?

Employers in the United States are required to prepare OSHA forms regarding certain types of workplace illnesses and injuries. Employers must keep records of serious work-related illnesses and injuries that satisfy different criteria under the OSHA recordkeeping regulations. Under this set of regulations, employers must also post annual summaries of the OSHA recordkeeping logs as well as allow certain individuals access to these logs. Minor illnesses only requiring first aid do not need to be recorded. OSHA does not require reporting of near misses or close calls (defined as incidents in which an employee may have been hurt under slightly different circumstances) but does strongly encourage employers to investigate them.

Significantly, employers are required to immediately report employees' deaths directly to OSHA (within eight hours) and promptly report work-related in-patient hospitalisations, amputations or eye loss (within 24 hours).

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## Provision of information to workers

### 15 | What requirements apply regarding the provision of health and safety information to workers?

Certain information regarding workplace injuries and illnesses must be posted in the workplace, and employees and former employees must also be provided access to some of this information. Various other requirements apply to employers as well, including using signage to warn of potential hazards and posting an OSHA Rights poster and any OSHA citations issued. Employers must also provide adequate training programmes and must, for example, communicate information regarding the identity of and any hazards associated with workplace chemicals.

## Insurance requirements

### 16 | What insurance must employers carry to cover liability for occupational health and safety risks?

There is no general requirement under the OSH Act for employers to purchase insurance coverage for occupational health and safety risks. That said, most (if not all) states in the United States do require employers to purchase workers' compensation insurance to cover liability for occupational health and safety risks (and to provide benefits to injured employees due to work-related injuries or illnesses).

## Other duties and responsibilities

### 17 | Are employers subject to any other notable health and safety duties and responsibilities in your jurisdiction?

Employers should stay abreast of updated OSHA guidance and recommendations, which change frequently. Employers should watch for applicable federal, state and local laws and guidance relating to their industry.

## WORKER DUTIES, RIGHTS AND RESPONSIBILITIES

### Primary duty

### 18 | What is the nature and extent of a worker's duty to protect their own and others' health and safety under the relevant legislation and regulatory framework?

Employers must ensure that employees comply with all relevant Occupational Safety and Health Act of 1970 (OSH Act) requirements. As a general matter, the Occupational Safety and Health Administration (OSHA) focuses on the employer's duty to protect its own employees, although it is now more common for one employer to be cited for hazards to which another employer's employees were exposed. This is due to OSHA's application of the 'multi-employer worksite doctrine', where different employers on a worksite can be cited for the same hazard, either as a 'controlling', 'exposing', 'creating' or 'correcting' employer. OSHA

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enforcement does not extend to non-workers (such as customers), who may be protected by other laws and an overall duty of care.

### Consultation and collaboration with employers

**19** | Are workers in your jurisdiction entitled or required to consult and collaborate with their employer in relation to the development and implementation of health and safety measures and policies?

Under the OSH Act, employers generally have the discretion to decide to consult with employees or their authorised representatives for the development and implementation of health and safety policies. There are a limited number of OSHA regulations that require employers to consult with their employees or authorised representatives. Several state plans also have additional requirements related to employee safety committees and consultation.

### Trade unions

**20** | What role do trade unions play in protecting occupational health and safety in your jurisdiction?

Labour unions, who are the authorised collective bargaining representatives of employees at US worksites, can play a role in workplace safety, but this is typically governed by the specific terms of the collective bargaining union elected by their employees at a particular worksite. As such, the role of the union will vary from worksite to worksite, but examples of areas where the union can play a role include training, serving on a joint management-labour safety committee, providing input to employer health and safety policies, objecting to abatement deadlines in contested OSHA cases, as well as participating in OSHA inspections. OSHA will also seek the input of an authorised union as part of any settlement negotiation with an employer.

### Whistle-blowing

**21** | Are workers afforded any legal protections against reprisals for whistle-blowing in relation to occupational health and safety risks?

Yes, OSHA administers over twenty whistleblower protection statutes, under which employees have rights protected against retaliation for asserting health and safety-related complaints. One particularly prominent law is section 11(c) of the OSH Act, which provides generally that no person shall discharge or discriminate against any employee filing any complaint, instituting any proceedings, testifying or otherwise exercising rights under the OSH Act. Most such statutes are enforced by OSHA, which as a department focuses on investigating and enforcing whistleblower complaints under federal laws that protect employees from retaliation for reporting workplace hazards or violations (for example, the [Surface Transportation Assistance Act](#), the [Toxic Substances Control Act](#), the [Clean Air Act](#) and the [Sarbanes Oxley Act](#) to name a few).

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## Right to refuse work

### 22 | Do workers have the right to refuse work or seek reassignment in hazardous situations?

Yes, under certain conditions. Employees have the right to refuse to work in specific circumstances, including when the workplace clearly presents a risk of imminent danger of physical harm or death. OSHA regulations clarify that the:

*condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.*

## HAZARDS AND RISKS

### Hazardous substances and chemicals

### 23 | What occupational health and safety rules govern the handling and use of hazardous substances and chemicals? What are the practical implications of these rules?

The Occupational Safety and Health Administration (OSHA) has several standards that cover the topic of hazardous chemicals.

One of OSHA's most frequently cited provisions is [29 CFR section 1910.1200](#), the 'Hazard Communication' standard. This standard contains several rules requiring employers to communicate the presence and risks associated with toxic substances in the workplace. Employers are required to maintain safety data sheets for each hazardous chemical present in the workplace, which must be readily accessible to employees in a paper, electronic or another alternative format so long as no barriers to immediate access are created by such format. The Hazard Communication standard also contains detailed requirements on classifying hazards, labelling and training.

Next, OSHA regulation subpart H covers 'Hazardous Materials'. Each standard under subpart H contains rules and regulations for different types of hazardous materials. Specific standards apply to the following substances:

- compressed gases;
- acetylene, hydrogen;
- oxygen;
- nitrous oxide;
- flammable liquids;
- spray finishing using flammable and combustible materials;
- explosives and blasting agents;

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- liquefied petroleum gases; and
- anhydrous ammonia.

Employers using these substances should be sure to comply with the additional requirements listed in the corresponding standard.

Further, the 'Process Safety Management of Highly Hazardous Chemicals' standard requires that employers develop a written plan and procedures for handling highly hazardous substances in the workplace. Among other requirements, the employer is required to perform inspection and testing on any process equipment related to the use of these substances.

In addition, the 'Hazardous Waste Operations and Emergency Response' standard imposes requirements for operations involving hazardous waste that are conducted at treatment, storage, disposal facilities and clean-up operations at uncontrolled hazardous waste sites.

OSHA regulation subpart Z covers 'Toxic and Hazardous Substances'. OSHA has a specific standard for the following toxic substances:

- air contaminants;
- asbestos;
- coal tar pitch volatiles;
- several carcinogens;
- inorganic arsenic;
- lead;
- chromium (VI);
- cadmium;
- benzene;
- coke oven emissions;
- bloodborne pathogens;
- cotton dust;
- 1,2-dibromo-3-chloropropane;
- acrylonitrile;
- ethylene oxide;
- formaldehyde;
- methylenedianiline;
- 1,3-butadiene;
- methylene chloride;
- respirable crystalline silica; and
- ionising radiation.

This list is non-exhaustive, and any employer working with hazardous chemicals should check OSHA standards for applicable requirements.

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## Heavy machinery

### 24 | What occupational health and safety rules govern the operation of heavy machinery? What are the practical implications of these rules?

OSHA regulation subpart O covers 'Machinery and Machine Guarding'. These standards include general requirements for all machines as well as requirements for specific types of machines. Generally, the point of operation, or the area on a machine where work is actually performed, must be guarded in some manner, and machines designed for the affixed location must be anchored to prevent movement.

Further, the machines with dedicated standards include:

- woodworking machinery;
- cooperage machinery;
- abrasive wheel machinery;
- mills and calendars in the rubber and plastic industries;
- mechanical power presses;
- forging machines; and
- mechanical power-transmission apparatus.

Employers using these types of machinery must be sure to adhere to the additional requirements imposed by these standards.

## General machinery

### 25 | What occupational health and safety rules govern the operation of general machinery in the workplace?

OSHA regulation subpart O covers 'Machinery and Machine Guarding'. These standards include general requirements for all machines as well as requirements for specific types of machines. Generally, the point of operation, or the area on a machine where work is actually performed, must be guarded in some manner, and machines designed for affixed locations must be anchored to prevent movement.

## Lock-out and tag-out

### 26 | What occupational health and safety rules govern how employees are protected while performing service and maintenance on machinery and equipment? Any there any exceptions to these rules?

OSHA's 'Control of Hazardous Energy (Lockout/Tagout)' standard requires employers to establish a programme consisting of energy control procedures, employee training and periodic inspections to ensure that before any employee performs any servicing or maintenance on a machine or equipment where the unexpected energising, start-up or release of stored energy could occur and cause injury, the machine or equipment shall be isolated from the energy source and rendered inoperative. The construction, agriculture, electric utilities and oil and gas well drilling and servicing industries are exempt from the standard.

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## Ergonomic risks and eye strain

### 27 | What rules and measures apply to manage ergonomic risks and eye strain in the workplace?

There are no OSHA standards related to ergonomics and eye strain. On 3 March 2001, President George W Bush signed Senate Joint Resolution 6, which rescinded the OSHA's prior ergonomics standard. Under the Congressional Review Act, OSHA is prohibited from issuing a rule that is substantially the same as a former one.

However, OSHA has issued extensive guidance on the topic of ergonomics and enforces it through the General Duty Clause of the Occupational Safety and Health Act (the OSH Act). Section 5 of the OSH Act, also known as the General Duty Clause, requires that employers provide employees with a place of employment free from recognised hazards that cause or are likely to cause death or serious physical harm (serious physical harm means that a part of the body is damaged so severely that it cannot be used or cannot be used very well). If an employer fails to comply with OSHA ergonomics guidance and this failure results in workplace hazards that cause or are likely to cause death or serious physical harm, then OSHA does issue citations and assess civil penalties for a violation of the General Duty Clause.

## Noise and temperature

### 28 | What rules and measures apply to manage risks arising from workers' exposure to noise and temperature extremes?

OSHA's 'Occupational Noise Exposure' standard requires employers to utilise feasible administrative and engineering controls when employees are subjected to sounds exceeding certain thresholds. If those controls fail to reduce sound to an acceptable level then the employer is required to provide personal protective equipment. Where employees are exposed to sound equal to or exceeding an eight-hour time-weighted average sound level of 85 decibels, then the employer must implement a hearing conservation programme. Employers must provide periodic audiometric testing at no cost to employees to monitor their hearing. Employees must also receive information and training.

OSHA has also issued extensive guidance on the topic of heat-related illness and enforces it through the General Duty Clause of the OSH Act. This 'catch all' provision requires that employers provide employees with a place of employment free from recognised hazards that cause or are likely to cause death or serious physical harm (serious physical harm means that a part of the body is damaged so severely that it cannot be used or cannot be used very well).

Relevant OSHA guidance suggests that employers establish a heat illness prevention programme when workers are exposed to extreme heat. Employees working in extreme heat should be provided with water, rest and shade. New or returning employees should be allowed gradually increased workloads and more frequent breaks to acclimatise. Additionally, employers must monitor employees for signs of illness. Employers should plan for emergencies and train employees on heat illness prevention. If an employer fails to comply with OSHA heat-related illness guidance and this failure results in workplace hazards that cause

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or are likely to cause death or serious physical harm, then OSHA may issue a citation to the employer and assess civil penalties for a violation of the General Duty Clause.

State plans, such as California's, also have additional standards related to heat.

## Fire risks

### 29 | What rules, restrictions and procedures govern the assessment and management of fire risks in the workplace?

OSHA's regulation subpart L covers 'Fire Protection'. Employers are required to adopt a written fire prevention plan that is available to employees. Also, employers are required to make portable fire extinguishers readily accessible to employees in the workplace. Additionally, standards govern the design, accessibility and maintenance of various fire protection systems, such as:

- standpipe hoses;
- automatic sprinklers;
- fixed extinguisher systems;
- fire detection systems; and
- employee alarm systems.

Further, there is a standard governing the organisation, training and personal protective equipment for fire brigades established by an employer. Additional standards may exist under state law. For example, the California Division of Occupational Safety and Health (Cal/OSHA) has a regulation to protect employees exposed to wildfire smoke, which requires, in part, identification of harmful exposures, training and instruction and control of harmful exposures.

## Psychiatric harm from stress, abuse and violence

### 30 | What rules and measures apply to prevent and address psychiatric harm arising from workplace stress, abuse and violence?

There are no specific OSHA standards related to psychiatric harm. However, OSHA has issued guidance on the topic of workplace violence and enforces it through the General Duty Clause of the OSH Act including for certain industries such as healthcare and social services, hospitals, late-night retail and taxi drivers. According to OSHA, an employer that becomes aware of workplace violence, threats, intimidation or other indicators of violence in the workplace is on notice of the risk of workplace violence and should implement a workplace violence prevention programme combined with engineering controls, administrative controls and training.

In addition, mental illnesses, such as depression or anxiety disorder, that have work-related stress as a contributing factor, are recordable if an employee voluntarily provides the employer with an opinion from a licensed healthcare professional with appropriate training and experience (ie, a psychiatrist, psychologist, psychiatric nurse practitioner, etc) stating that the employee has a mental illness that is work-related, and the case meets one or more of the general recording criteria.

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## Special categories of worker

### 31 | Are there any notable rules or procedures providing additional health and safety protection to special categories of worker?

There are no OSHA standards or guidance related to special categories of workers, such as pregnant, elderly or disabled workers.

## Other hazards and risks

### 32 | Are there any notable rules, restrictions or procedures applicable to other occupational hazards and risks in your jurisdiction?

Fall Protection is consistently OSHA's most frequently cited standard each year (29 CFR sections [1926.501](#) for construction and [1910.28](#) for general industry). Employers operating a workplace that presents any risk of falling should take special care to conform with the applicable OSHA requirements. In addition, subpart I covers 'Personal Protective Equipment'. Generally, employers are required to assess the workplace to determine if there are hazards present or likely present that necessitate the use of personal protective equipment (PPE). If so, the employer is required to provide and enforce the use of such necessary PPE. Employers must ensure PPE properly fits each employee and that damaged or defective PPE is not used. Employers must also communicate PPE decisions to employees and train employees on PPE.

Occupational safety and health standards in the United States cover numerous other topics. Employers operating in the United States should be sure to consult with a safety and health attorney or professional about the exact standards that apply to their workers.

## ENFORCEMENT

### Inspections and investigations

### 33 | What rules and procedures govern the enforcement authorities' inspection of workplaces and investigation of employers for health and safety violations?

Section 5 of the Occupational Safety and Health Act of 1970 (the OSH Act) governs inspections and investigations. If probable cause has been established, an OSHA representative, upon presenting appropriate credentials to the owner, operator or agent in charge, may enter any workplace where work is being performed to inspect or investigate during regular working hours or at other reasonable times. As long as they have probable cause and the inspection is limited in scope to that topic, the OSHA representative may inspect all pertinent conditions, structures, machines, apparatus, devices, equipment and materials, and may question privately any such employer, owner, operator, agent or employee. The OSHA representative may also require the attendance and testimony of witnesses and the production of evidence under oath as part of an ongoing inspection or investigation. Any information sought by OSHA must be obtained with a 'minimum burden' on employers.

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## Cooperating with authorities

### 34 | What best practices and practical considerations should employers bear in mind when cooperating with and responding to inspections and investigations by the health and safety authorities?

Crucially, employers should always be prepared for an OSHA inspection by having a plan and policies in place for the handling of inspections. OSHA will wait a reasonable amount of time for the employer to evaluate an inspection request and ensure that the right person is there to manage the inspection. Employers should seek to understand the basis for the inspection and then limit the scope of the inspection to the topics that give OSHA probable cause to inspect. If needed, employers can require OSHA to obtain a search warrant – this is relatively rare for OSHA inspections, so employers should consult with an attorney if possible before making this demand.

## Penalties and notices

### 35 | What administrative penalties and notices may the authorities impose on employers for health and safety violations? Can these be appealed?

Section 9 of the OSH Act grants the Secretary of Labor (the Secretary) the power to issue citations if, upon inspection or investigation, there is reason to believe that an employer has violated the OSH Act. Section 17 of the OSH Act grants the Secretary the power to assess civil penalties for such violations. OSHA will issue the employer a Citation and Notice of Penalty if it determines that a violation exists.

If the employer agrees to the Citation and Notification of Penalty, then they must abate the violation and pay any associated penalties. However, an employer may contest by filing a written Notice of Intent to Contest with the OSHA area office within 15 working days of receipt of the Citation and Notification of Penalty. This deadline is critical, and employers may waive their right to appeal if they miss it.

Before filing a Notice of Intent to Contest, the employer may request an informal conference with the OSHA area director. This is an opportunity to obtain more information regarding the violation and negotiate a settlement. However, this does not extend the deadline to file a Notice of Intent to Contest.

If a Notice of Intent to Contest is filed, the OSHA area direction will forward the employer's case to the Occupational Safety and Health Review Commission (OSHRC). The OSHRC will assign the case to an administrative law judge (ALJ) and a hearing date will be scheduled. Employers may represent themselves or hire outside counsel. The ALJ has the authority to affirm, modify or dismiss any contested violation items or penalties.

After the ALJ has issued a final ruling, the employer and OSHA may appeal the decision to the OSHRC. The final ruling by the OSHRC may then be appealed to the federal circuit court where the case arose or the circuit court where the employer maintains its principal place of business.

Different procedures will govern in OSHA state plan states.

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## Civil liability

### 36 | What is the extent of the employer's civil liability for health and safety violations? Can this liability be limited in any way? What defences apply?

The OSH Act does not provide a private right of action. Penalties may only be assessed by OSHA, and cannot be obtained by individual employees. Section 9 of the OSH Act governs penalties that may be issued by OSHA. Below are the maximum penalty amounts, with the annual adjustment for inflation, as of 15 January 2023:

Type of violation	Penalty
Serious, other-than-serious and posting requirements violations	\$14,502 per violation
Failure to abate	\$14,502 per day beyond the abatement date
Wilful or repeat	\$145,027 per violation

## Criminal liability

### 37 | May employers be criminally liable for health and safety violations? What defences apply?

Any employer who wilfully violates the OSH Act or any occupational health and safety standards standard or rule and that violation causes death to any employee, may if convicted, be fined or imprisoned for a maximum of six months or both. However, if the conviction is for an employer's second violation, that employer will be fined or imprisoned for a maximum of one year or both.

Any person who gives advance notice of any inspection to be conducted under the OSH Act, without authority from the Secretary or designees, may, if convicted, be fined or imprisoned for a maximum of six months or both.

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under the OSH Act may, if convicted, be fined or imprisoned for a maximum of six months or both.

Any person who kills a person while engaged in or on account of the performance of investigative, inspection or law enforcement functions of OSHA may be imprisoned for a maximum term of life.

## Director and officer liability

### 38 | To what extent may company directors and officers be held liable for health and safety violations?

The OSH Act provides no statutory basis for extending liability for occupational health and safety violations to individual officers or directors. Generally, the employer entity itself is held liable. However, in some rare instances, OSHA has attempted to pierce the corporate veil to impose personal liability on owners, directors and corporate offices in extreme cases

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or where OSHA feels the corporate entity is being inappropriately used for the sole purpose of shielding from liability for fraud or injustice.

## UPDATE AND TRENDS

### Recent developments

#### 39 | What have been the most significant recent occupational health and safety developments in your jurisdiction, including any notable court decisions and regulatory actions?

The Occupational Safety and Health Administration (OSHA) has several new initiatives aiming to improve workplace safety in 2023.

Firstly, OSHA is ramping up enforcement efforts by increasing inspections and citations, and using its subpoena powers during initial investigations. For example, 'instance by instance' violations like poor respiratory protection and defective machine maintenance were previously only issued where employers' violations were 'willful-egregious', as evidenced by substantial proof. Now, OSHA will allow instance-by-instance citations for less egregious violations.

OSHA also plans to target high-risk industries like construction, with the intent of reducing injuries and fatalities in those sectors. OSHA's director of construction Scott Ketcham has articulated that a worker is three times more likely to die on a construction site than in general industry. He also recently mentioned that OSHA will be promoting suicide prevention since the suicide rate is much higher in construction than in other industries.

Additionally, on May 1, OSHA announced a national goal of reducing and preventing workplace falls. According to US Bureau of Labor Statistics data, of the 5,190 fatal workplace injuries in 2021, 680 were associated with falls from elevations, amounting to about 13 per cent of all workplace deaths. Further, OSHA has emphasised that falls are the leading cause of fatal workplace injuries and the violation most frequently cited in construction inspections.

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# Morgan Lewis

[Jonathan L Snare](#)

[jonathan.snare@morganlewis.com](mailto:jonathan.snare@morganlewis.com)

[Jason S Mills](#)

[jason.mills@morganlewis.com](mailto:jason.mills@morganlewis.com)

[Alana F Genderson](#)

[alana.genderson@morganlewis.com](mailto:alana.genderson@morganlewis.com)

1111 Pennsylvania Avenue NW, Washington DC 20004-2541, United States

Tel: +1 202 739 3000

[www.morganlewis.com](http://www.morganlewis.com)

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